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Death of President Josiah Marvel

ON October 11th the news came to the headquarters of the Association at Chicago that President Josiah Marvel had died early that morning. The report seemed incredible. Only a few days before he had been in Chicago, conferring with various members of the Executive Committee about the affairs of the organization. He seemed in the best of health and spirits, and looked forward to the future with confidence and courage. Nothing was further from anyone's mind than the thought that he was so soon to pass away.

He died at his home near Wilmington, Delaware, of an acute heart attack. Friends who were familiar with his activities during the past few months inclined to believe that their strenuous nature had largely superinduced the attack.

Immediately on hearing of the tragic and sad event Past President Henry Upson Sims named the members of the Executive Committee and four Past Presidents of the American Bar Association to act as representatives of the Association at the funeral. The notice was so short that not all could possibly attend, but Past Presidents Sims and Whitman, Secretary William P. MacCracken, Jr., Clarence E. Martin, Guy A. Thompson and James R. Keaton—the last three being members of the Executive Committee—were present. Judge Hugh M. Morris, member of the General Council for Delaware, and Messrs. Charles A. Boston, Ralph Van Orsdel and Province M. Pogue, former members of the Executive Committee, were also at the funeral. Mr. Pogue, by special request of the members of the Canadian Bar Association, represented that organization. Other prominent members of the American Bar Association were on the list of honorary pall-bearers.

The funeral services were held Monday afternoon and were conducted by Bishop Philip Cook, of the Episcopal Diocese of Delaware. "The services were very impressive and the spot in which he is buried is a beautiful one," writes Mr. Boston. As a mark of respect, and to enable lawyers and judges to attend, the State and Federal Courts were closed early in the afternoon.

Report of Federal Judicial Conference

THE Judicial Conference provided for in the Act of Congress of September 14, 1922 (42 Stat. 837, 838; sec. 218, Title 28, U. S. Code) was called and sat for three days, October 1, 2 and 3, 1930. The following judges were present in response to the call:

First Circuit, Senior Circuit Judge George H. Bingham.

Second Circuit, Senior Circuit Judge Martin T. Manton.

Third Circuit, Senior Circuit Judge Joseph Buffington.

Fifth Circuit, Senior Circuit Judge Nathan P. Bryan.

Sixth Circuit, Senior Circuit Judge Arthur C. Denison.

Seventh Circuit, Senior Circuit Judge Samuel Alschuler.

Eighth Circuit, Senior Circuit Judge Kimbrough Stone.

Tenth Circuit, Senior Circuit Judge Robert E. Lewis.

The senior circuit judge for the Fourth Circuit, Judge Waddill, was absent, and his place was taken by Circuit Judge John J. Parker.

The senior circuit judge for the Ninth Circuit Judge Gilbert, was absent, and his place was taken by Circuit Judge Frank H. Rudkin.

The Attorney General, the Solicitor General, and their assistants charged with the examination

of statistics were present. Among other recommendations and suggestions, the Attorney General submitted to the Conference a report of the condition of the dockets of the federal district courts and circuit courts of appeals for the fiscal year ending June 30, 1930, as compared with the fiscal year ending June 30, 1929. Each circuit judge also presented to the Conference a detailed report, by districts, of the work of the courts in his circuit for the fiscal year 1930.

Our examination of the submitted statistics discloses that there were pending upon the dockets of the district courts at the close of the fiscal year 1930, 155,730 cases as compared with 148,566 cases pending at the close of the previous fiscal year, that is, an excess of over 7,000 cases, embracing civil cases, both governmental and private, criminal cases and bankruptcy cases.

The increase in the number of pending cases, as reported by the Attorney General, is as follows:

	1929	1930
U. S. Civil cases pending	21,108	21,320
Criminal cases pending	31,153	35,849
Private suits pending	37,503	37,151
Bankruptcy cases pending	58,802	61,410
	148,566	155,730

It thus appears that the increased number pending at the close of the fiscal year 1930 is accounted for solely by the number of United States civil, criminal and bankruptcy cases pending, since there was a slight decrease in the number of private suits. It is further to be noted that increase in the number of pending cases is in large measure due to the increase in cases filed during the year. In our last report we pointed out that during the fiscal year 1929, 8,034 more cases were commenced in the district courts than were commenced in the fiscal year 1928. But during the fiscal year 1930 slightly over 9,500 more cases were commenced in the district courts than were commenced in those courts during the fiscal year 1929. The comparison is as follows:

	1929	1930
U. S. Civil cases commenced	24,307	24,934
Criminal cases commenced	86,348	87,305
Private suits commenced	20,980	23,391
Bankruptcy cases commenced	57,280	62,845
	188,915	198,475

The increase in cases brought under the National Prohibition Act is thus shown:

	1929	1930
Prohibition cases (civil) commenced	11,237	11,882
Prohibition cases (criminal) commenced	56,786	56,992

We are also informed that in the 35,849 criminal cases pending on June 30, 1930 there were included 22,671 cases under the National Prohibition Act.

The inquiry discloses that the congestion in the federal district courts, despite the fact that, taken as a whole, the increase in the number of cases pending at the end of the year was less than the number of new cases brought, continues to be a major problem. In addressing ourselves to the question of the advisability of making provision for the appointment of additional judges, we are necessarily brought to the consideration of the effect of the restrictions now imposed by statute upon the appointment of successors to judges, where vacancies now exist or will hereafter arise. Our conclusion is that it is important that these restrictions should be removed, as stated in the following resolution adopted by the Conference:

"By the Act of September 14, 1922 (sec. 3, Tit. 28 U. S. Code) Congress created twenty additional district judgeships; but in the belief that the need was temporary and litigations would decrease, it imposed the limitation that vacancies therein should not be filled, without a further special act. Experience has shown that the need was permanent, and in every instance (but one,—New Mexico) where a vacancy has occurred there has been no question of the need of continuing the judgeship; but the time involved in getting the necessary special act has caused delay and congestion. There now remain of vacancies that have occurred or will occur in these judgeships so limited fourteen instances, viz:

two in the District of Massachusetts;
two in the Southern District of New York;
one in the Eastern District of New York;
one in the Western District of Pennsylvania;
one in the Eastern District of Michigan;
one in the Western District of Missouri;
one in the Southern District of New Jersey;
one in the Northern District of Texas;
one in the Northern District of Ohio;
one in the Eastern District of Missouri;
one in the Southern District of California;
one in the District of Arizona.

"In the same general situation, through the existence of a limitation upon filling a vacancy and the demonstrated permanent need that the vacancy when occurring should be filled, are a circuit judgeship in the Ninth Circuit (Act of March 1, 1929, sec. 213b, Tit. 28, U. S. Code) and district judgeships in Minnesota (Act of March 2, 1925, sec. 4, Tit. 28, U. S. Code) and in the Southern District of Iowa (Act of January 19, 1928, sec. 4(i), Tit. 28, U. S. Code).

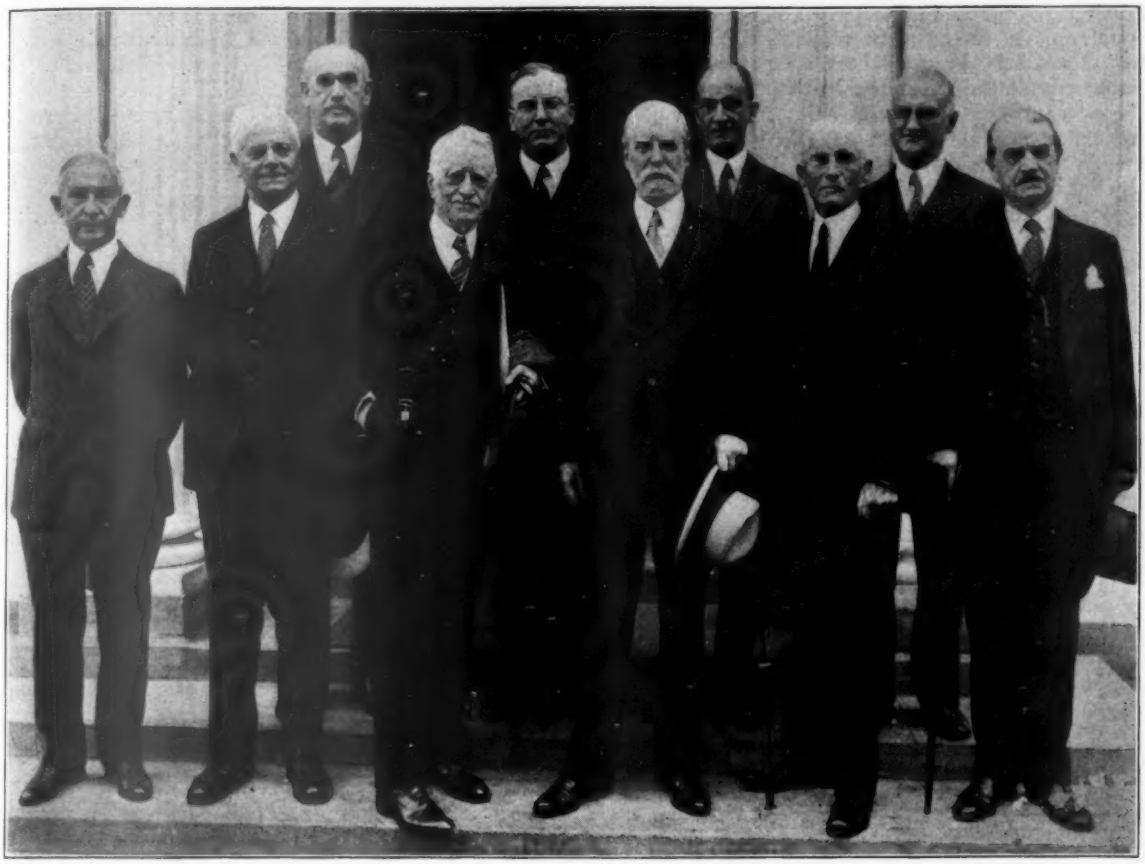
"The Ninth Circuit Court of Appeals will be left with only three judges, while it has had four for many years and will need four; and the districts of Minnesota and Southern Iowa cannot do without these judgeships.

"Accordingly, in order that from time to time there be no interruption and delay, we request the Attorney General to draft and urge the passage of legislation removing this limitation as to these specified judgeships and making them permanent."

The removal of the limitations above mentioned, and the appointment of successors where vacancies now exist or will hereafter occur, will not give adequate relief. In several parts of the country there is present need of additional judges. Accordingly the Conference recommends the enactment of legislation making provision for additional district judges as follows:

an additional district judge for the Southern District of New York;
an additional district judge for the Eastern District of New York;
an additional district judge for the Northern District of Georgia;
an additional district judge for the Eastern District of Michigan.
an additional district judge for West Virginia.

It is the sense of the Conference that no further provision for district judges should be made in existing districts at this time.



Chief Justice Hughes and Senior Judges of Circuit Courts of Appeal Make Annual Visit to Pay Respects to President Hoover. Front Row, left to right: Hon. Kimbrough Stone, Hon. Samuel Alschuler, Hon. Joseph Buffington, Chief Justice Hughes, Hon. Arthur Denison, Hon. R. E. Lewis. Back Row, left to right: Hon. Frank H. Rudkin, Hon. John J. Parker, Hon. Nathan P. Bryan, Hon. Martin T. Manton.

Henry Miller News Picture Service.

In our consideration of the problem of congestion, we have been met with proposals for the creation, not simply of additional judgeships, but of additional districts, which would involve the provision of the positions and facilities essential to the equipment of new districts. The question is thus presented as to the best means of promoting the economical and efficient administration of justice in the federal courts, whether by divisions of districts, consolidation of districts, or creation of new districts, and it seemed to the Conference that the time had come for a comprehensive survey. The Conference adopted the following resolution:

"The Attorney General calls our attention to the fact that there are pending in Congress several bills for the creation of new districts, and asks our recommendation as to the better method of meeting the need for more judicial service; either by making new districts or by additional judges in existing districts. It is represented to us by the West Virginia judges that special need for additional judicial service there exists and that a new district is the preferable method. We do not feel prepared to recommend either as to this instance or as to the general policy, until possessed of more information.

"We therefore request the Attorney General to make a survey or study of the general subject, as exhaustive as he may find feasible, including the possible consolidation or change of existing districts and division points, with estimates of cost and efficiency, and report the same to us at our next meeting.

The Conference recommends to the Attorney General that House Bill 11622, now pending, be so amended as to provide that the Eastern and Western Districts of Louisiana be combined to make but one district for Louisiana.

The Conference is satisfied that it is feasible under existing laws to hold conferences of the district judges within each circuit, and believes that such conferences to deal with local problems of administration will prove to be of no little value. Such conferences have been held to advantage in the Sixth and Eighth Circuits. The Conference adopted a resolution approving this policy.

In view of the pendency of the inquiry which is being undertaken by the Department of Justice through the Solicitor General, the Conference postponed consideration of matters relating to procedure in bankruptcy cases until the next Conference.

We observe, with satisfaction, that the Circuit Courts of Appeals are reasonably abreast of their dockets; that the congestion in the Circuit Court of Appeals for the Sixth Circuit due to the illness of judges, which we reported last year, has been

much relieved by the work of the judges of that court during the past fiscal year. We note that legislation has been enacted to provide an additional circuit judge for the Fifth Circuit to remedy the overburdening of the circuit judges upon which we commented last year. Aside from the recommendation which we make for the enactment of legislation to provide for the appointment of a successor to a circuit judge in the Ninth Circuit, when a vacancy shall occur, we have no recommendations at the present time for any increase in the judicial forces in the Circuit Courts of Appeals.

The Conference is advised that the existing statute (Act of Congress of March 3, 1911, c. 231, sec. 126; 36 Stat. 1132; sec. 223, Tit. 28, U. S. Code) requiring the Circuit Court of Appeals for the Fifth Circuit to hold sessions each year at Atlanta, Georgia; Montgomery, Alabama; and Ft. Worth, Texas; in addition to its session at New Orleans, Louisiana, has imposed unnecessary hardship upon the judges of that court and tends to delay the prompt disposition of the business of the court without compensating advantages. The Conference therefore recommends the amendment of the statute so as to require the holding of sessions of the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, only.

The Conference requests the Attorney General to make provision to furnish to each Circuit Court of Appeals a copy of the U. S. Supreme Court Service, a publication of the Legal Research Service, such copy to be sent as directed by the senior circuit judge.

The Conference has taken under consideration the possibility of improving the making and compilation of statistics of judicial work in the federal district courts and circuit courts of appeals. It is highly desirable that there should be uniform methods in the keeping of statistics in the various circuits so that resulting data may afford a satisfactory basis for comparison. It is also important that further consideration should be given to the categories to be adopted for the keeping of statistics so that there may be such units of specification as will furnish, so far as practicable, an adequate view of the work of each court. The science of judicial statistics is in the making and before recommending the adoption of an improved system for the federal courts the Conference believes that it should have advice from each circuit as to the measures deemed to be best adapted to the end sought and that through a consideration of the proposals thus submitted an appropriate plan may be formulated. Accordingly the Conference adopted a resolution that each senior circuit judge should send to the Chief Justice on or before March 1st next his conception of the form to be used for making a report of the business of the circuit for the fiscal year; that the Chief Justice be empowered to appoint a committee of the Conference, if he thinks it desirable in connection with this subject, and to prepare and to submit to the next Conference a form for use in all circuits.

The Conference also took into consideration the appropriate development of its own work as an effective agency for the improvement of the administration of justice in the federal courts. In order to avoid any question as to the scope of the authority which Congress intended to confer upon the Conference as such, the Conference thinks it advisable that there should be an amendment of the statute which created it (Act of September 14, 1922, 42 Stat. 837, 838; sec. 218, Tit. 28 U. S. Code). The Conference has resolved to request the Attorney General to urge such change in the statute as shall authorize the Conference to recommend to the Congress, from time to time, such changes in statutory law affecting the jurisdiction, practice, evidence and procedure of and in the different district courts and circuit courts of appeals as may to the Conference seem desirable.

For the Judicial Conference:

CHARLES E. HUGHES,
Chief Justice.

October 4, 1930.

Cleveland Assignment System Recommended to Federal Court

THE system of assignment of cases for trial which exists in Cleveland, Ohio, is held up as the most efficient in the country and as a model for imitation in a report made by the committee on Rules of Court relating to Calendars to Judges Francis G. Caffey and Alfred C. Coxe, of the United States District Court for the Southern District of New York.

The report contains a thorough description of the system in action, and also a number of letters from leading lawyers in Cleveland testifying to its successful operation. The important factors in the system, according to the committee, seem to be: 1. A steady policy on the part of the Court on calendar questions through the rulings of a Chief Justice who is given sufficient power to make his control effective. 2. An honest and efficient Assignment Commissioner. 3. A consistent policy on the part of all trial judges not to allow continuances after cases are sent out for trial, except under extraordinary circumstances, or else rules which refer all applications to postpone a trial after the case reaches a trial court room, to the Chief Justice. 4. A spirit of service to the Bar and to the public in the Assignment Commissioner's office.

"Your Committee sees no valid objections," the report continues, "to this system which should prevent its being adopted here. We feel that the advantages of this system to the Bench, Bar and public are so great as to warrant every effort to find a way to adapt it to our needs. Under this system it is possible for favoritism to be shown by the Assignment Commissioner in sending out cases. but this is a danger which exists with all officials possessing discretionary powers. We found no complaint on this score among the lawyers in Cleveland with whom we talked. The success in Cleveland seems due to the framing of rules which recognize the difficulties of the lawyer in getting cases to trial and the steady insistence by the court that the Bar observe such rules strictly. . . . Inconvenience to the public is obviated as far as possible by allowing witnesses under subpoena to report to the Assignment Commissioner's office, where arrangements are made with each such witness for telephone notice to him when the case is to be called for trial."

Survey of Legal Status of Women

"A SURVEY of the Legal Status of Women in the Forty-Eight States," bringing a former publication of the same name in 1924 down through the legislation of 1929, has been issued by the National League of Women Voters, 532 Seventeenth St., Northwest, Washington, D. C. It contains 226 pages. There is a summary statement in the forepart of the book by Savilla Millis Simons, and this is followed by a survey of the material by States, which makes it extremely convenient for anyone wishing to secure information as to a particular State.

This is a new feature of the book, we are told in the preface to this revised edition by Miss Sophonisba P. Breckenridge, of the University of Chicago, chairman of the National League's Committee on the Legal Status of Women. "It should also be said," she adds, "that the statements for each state have been referred to the state member of the Committee in any state in which there is a member, and in a number of cases the state member has called in the assistance of another able and experienced lawyer. No attempt was made to supplement the legislation by reference to judicial decisions. When, however, the state members have reviewed the statements, they have in a number of cases felt it essential that judicial decisions should be cited. In those cases, then, in which the statements with reference to the states are largely based upon judicial decisions, as for example, Georgia, Massachusetts, Michigan and New York, it is understood that the editor is under great obligation to state members."

Proposed Divorce Policies for Ohio

THE "Divorce Clinic," which was started last summer in Cleveland, Ohio, for the purpose of strengthening the marriage and divorce laws of the State, and thereby serving the interests of the home, has reached a number of definite conclusions which will be embodied in bills to be presented to the General Assembly. The policies thus arrived at have been approved by the Common Pleas Judges, we are told. They are, briefly, as follows:

1. The plaintiff in a divorce suit should be a bona fide resident of the county in which he brings the action for one year before he files his petition.—The present requirement is thirty days. 2. Any person coming to Ohio from another state to file a divorce petition, should reside in Ohio three years before filing the petition.—The present requirement is one year. 3. No divorce case should be advanced or tried until after it is pending for ninety days on the docket. 4. Every petition for divorce before being filed should contain a sworn statement that the parties have made a bona fide attempt to effect a reconciliation through the agency of the Domestic Relations Court, except where the ground for divorce is willful absence for more than three years. 5. When a divorcee is found guilty of contempt of Court for deserting or neglecting his minor children in a divorce proceedings, such person may be sent to the Workhouse instead of to the County Jail, and the county from which he is convicted will pay the mother of the deserted or neglected children the sum of $2.00 per day.—This policy has met with considerable success in Detroit. 6. Consideration was given to the advisability of recommending a bill providing that the Domestic Relations Branch should have the sole right to try all divorce cases except where for good cause they may be assigned to a different Judge.—Final action has not been taken on this.

The Clinic has discussed the advisability of giving the Judge power to provide that divorced persons may not remarry within a maximum limitation of three years, except where there are children whose support may be involved; that in such a case the Judge may fix the limitation beyond three years, not exceeding a period when the youngest child shall have arrived at the age of sixteen years. Further information is desired before a bill will be drawn on this subject.

The bills before being introduced in the General Assembly will be scrutinized by the State Judges' Association next winter, by the State Bar Association, and also by various other social organizations. The President of the Cleveland Bar Association, Luther Day, has appointed a special committee to cooperate with the Court and such other committees as the Court may appoint in the preparation of the bills for presentation to the legislature. The "Divorce Clinic" was started last summer by Judge A. J. Pearson, who is in charge of the Domestic Relations Branch of the Court of Common Pleas.

International Law Association Meets in New York

THE International Law Association met in New York on Sept. 2 and continued its sessions for a week. Representatives of twenty-five countries were present at the meeting, including many of the most distinguished names in the field of international law. Hon. John W. Davis was unanimously elected President of the conference and Lord Tomlin, of England, Lord of Appeal in Ordinary, was chosen Vice-President.

Mr. Davis' opening address, according to the report in the New York Times, ended with an optimistic prediction of the rise of the "majestic structure of international law," but it contained a warning as to the slow progress to be expected. He cited the delays attending uniform legislation in the United States as suggestive of the sterner difficulties facing efforts to codify international law. Some present-day statesmen, he said, "insist that all effort to set up international machinery for the settlement of disputes or the preservation of peace must be preceded by the codification of international law, and that nothing else can or should be done until that simple task is finished. But fifty-seven years of effort on the part of many laborers in the same vineyard have shown that the thing is not so simple as it might appear."

But to suggest that to establish rules of international conduct is arduous is not to confess that it is impossible. He added: "Can it be doubted that more minds are engaged in the effort to formulate the rules of international conduct today than at any single period in the world's history; that more labor is being expended as well as more agencies provided for its expression than has heretofore been known? The Conference on Codification at The Hague, under the auspices of the League of Nations, the American Institute of International Law, your own

society—these and many others are bending their energies to the undertaking."

Mr. Davis pointed to the World Court as the potential source of a growth of legal precedents and urged patience in the work of codification. "An agreement," he concluded, "upon any single subject will make easier the approach to the next, and little by little the structure of the law will rise, majestic and serene, a monument to those who have labored upon it, a beacon and a landmark to those who shall follow."

Lord Tomlin made the first response for the delegates from abroad, stressing the importance of the legal profession in securing international concord. Dr. Walter Simons, former Chief Justice of the German Republic, then spoke, expressing regret for the retirement of Chief Justice Hughes from the World Court and a hope that the United States would see fit to adhere to that tribunal. Commendatore Giuseppe M. Palliccia, special attaché of the Royal Italian Embassy, speaking of international accord, observed that "more than a change of machinery, we need a change in men." M. Pierre Arminjou, of France, former judge of the Mixed Tribunal at Cairo, made the final response, in which he spoke of the success of the American political system. "If the civilized world is to become really pacific, animated by a common spirit," he said, "it must be more and more after the fashion of the United States."

During its sessions the Association discussed the following subjects: Legalization of Documents, Local Insurance, Effect of War in Contracts, Insolvency (Deeds of Arrangement or Concordats), Neutrality, Trade-Marks, Commercial Arbitration, Codification, Air Law, Radio, Private Property of Foreigners, Minorities, Agency, Unfair Commerce and Cartels. It is hoped in an early issue to present a brief account of the discussion and the conclusions reached by the Association on several of these important subjects.

Bar Examiners Take Steps Toward Permanent Organization

THE annual meeting of the Section of Legal Education and Admissions to the Bar of the American Bar Association this year was intended primarily to bring together bar examiners from over the country for a discussion of their mutual problems. However, owing to the fact that resolutions requiring considerable time for discussion were introduced recommending that law schools have a certain number of men on their faculty having at least ten years of actual practicing experience, the time was inadequate for a thorough discussion of anything connected with bar examinations.

After adjournment of the Section meeting on Tuesday a hurried call was issued for an informal conference of bar examiners who were attending the annual meeting. This was set for eight o'clock the next evening just preceding the speech of the Honorable N. W. Rowell, K. C., and the President's Reception. A group of nineteen representatives from fourteen states met and took the first steps toward creating a permanent organization for a Conference of Bar Examiners to meet annually at the time of the yearly meeting of the Association. This step was in the form of a motion, which was passed unanimously, requesting the Chairman of the Section of Legal Education and Admissions to the Bar to appoint a committee of five bar examiners charged with the duty of arranging another meeting of the bar examiners next year when the Association meets, where officers would be elected and plans for the future discussed. It was the consensus of opinion at the meeting that bar examiners should not only include members of law examining committees but should also include character committees, the importance of which cannot be too greatly stressed in bringing about a reliable and trustworthy bar. The committee will also plan a program for the next meeting of bar examiners. The personnel of this committee will be announced in the next issue of the JOURNAL.

It is perhaps not fully known to members of the profession that various efforts at some kind of a permanent organization have been made in the past. As early as 1898, pursuant to an invitation from the Section of Legal Education and Admissions to the Bar, representatives of the Boards of Bar Examiners of the various states met in conference at the American Bar Association meeting. At that time only the following twelve states had Boards of Bar Examiners: Massachusetts, New Hampshire, Connecticut, Maryland, New York, West Virginia, Ohio, Illinois, Michigan, Wisconsin, Minnesota and Colorado. Of these all except West Virginia were represented. The discussion at the meeting included an exposition by the various representatives present of the particular systems in vogue in their respective states. Before adjournment it was resolved that a similar conference should be held the following year. At the time of the conference in 1899, Maine, Georgia, Louisiana and Maryland had also established Boards of Bar Examiners. A committee was appointed at that meeting to report the following year on a permanent organization, and in 1900 such an organization was actually formed although only ten delegates were present. This lack of interest caused the organization to die at its birth, and no subsequent meetings of bar examiners were held until 1904.

In that year, on the call of the Secretary of the Kansas Board of Law Examiners, another conference was held. This was given the name of "The First National Conference of State Boards of Law Examiners," and although a resolution was there passed looking toward the adoption of a permanent organization, it was not followed up. A long period elapsed before another meeting was held. A committee appointed in 1910 to arrange for a joint meeting of the Section, the Association of American Law Schools and the National Conference of State Boards of Law Examiners did not succeed in reviving the National Conference. In 1914 the Section of Legal Education and Admissions to the Bar held a preliminary special session to which both bar examiners and law school teachers were invited. Another similar conference was held at the Section meeting in 1916, which was the last formal attempt to bring together representatives of the State Boards of Bar Examiners.

From this recital it would seem that attempts to form such an organization were foredoomed to failure. There are several reasons, however, why an organization could be effected now which would endure even though this did not prove to be the

case on previous attempts. In the first place every state in the Union except Indiana now has a State Board of Bar Examiners. They are alive and actively interested in what the other boards are doing. The tendency which has developed rather strongly in recent years to give severe examinations has resulted in a keener interest by members of the various boards in the kind and type of question which is being given in other states and in the procedure of other boards. In the second place, the office of the Adviser of the Section is functioning during the entire year and is available for correspondence, sending out notices, compiling statistics, or other things of like nature which may be of use to an organization of bar examiners. If, for example, it was decided to publish a monthly bulletin to be sent to bar examiners, this could be readily done through the Adviser's office with only the assistance of a committee of editors from the bar examiners.

An illustration of the interest which members of the Boards are taking in what the other states are doing is afforded by a motion which was passed at the informal meeting in Chicago. It was there voted that the Adviser of the Section request each State Board to furnish him with fifty copies of the next examination, to be distributed for confidential use to the boards of each of the other states. If followed out, this will mean that each state will have a complete file of one 1930 examination of every other state.

The question of regional or national bar examinations was touched upon at the conference, but not fully discussed. The American Medical Association already has what is known as the National Board of Medical Examiners, and the certificate that the candidate has passed the National Board examinations is recognized by the licening authorities of forty-two states and territories. Such a development in law seems logical, but will undoubtedly take some time to grow and receive recognition from the states.

One of the points which was made at the Chicago meeting was the importance of the bar examining boards as an agency in raising the standards of admission to the bar. This is not only true because these boards may exclude a great number of ill-prepared candidates by rigorous and well thought-out examinations, but is also true for the reason that they are so close to the facts concerning the necessity for adequate pre-legal education and legal training that they are able exponents of such standards. Moreover, their influence with Supreme Courts and with legislatures is great because of this experience.

It is planned that the next meeting of the bar examiners will be separate and apart from the meeting of the Section of Legal Education and Admissions to the Bar so that they will have adequate time to fully consider their own particular problems. The members who attended the informal conference in Chicago were as follows:

Oscar G. Haughland, Minnesota; D. J. F. Strother, West Virginia; James W. Vandervort, West Virginia; John Knauf, North Dakota; Dix H. Rowland, Washington; Thomas Stephen Brown, Pennsylvania; Charles P. Maxwell, Pennsylvania; J. Pelham Johnston, Kentucky; D. Niel Ferguson, Florida; E. D. MacDougall, Illinois; James S. Handy, Illinois; Charles P. Megan, Illinois; A. G. C. Bierer, Jr., Oklahoma; John Kirkland Clark, New York; Philip J. Wickser, New York; Warren F. Cressy, Connecticut; William E. Hutton, Colorado; James C. Collins, Rhode Island; Stuart B. Campbell, Virginia.

WILL SHAFROTH,
Advisor to Council of Legal Education.

Three Law Schools Approved by Council

AT the meeting of the Council of Legal Education and Admissions to the Bar of the American Bar Association in Chicago, August 19th, the College of Law of the John B. Stetson University, DeLand, Florida, was added to the approved list of the American Bar Association. The New York University School of Law in New York City was also approved, except as to those part-time students who commenced their legal studies prior to September 1, 1930, and the University of Arizona College of Law at Tucson was approved, except as to students who commenced their legal studies prior to September 1, 1929. The reasons for the exceptions stated are that New York University only inaugurated a four-year part-time course beginning in the fall of 1930, and the two year-pre-legal requirement was only imposed at the University of Arizona College of Law with the class entering in the fall of 1929.

SOCIAL PROGRESS AND THE LAW

Real and Vital Connection Between the Progress of Society and the Law as It Is Administered by Legal Profession—Fundamentally, and Especially with Respect to Substantive Law, That Profession Has Met Problems Due to Changing Conditions in a Way That Should Command Respect and Gratitude—Ground for Criticism as to Procedure*

By Hon. John J. Parker
Judge of United States Circuit Court of Appeals, Fourth Circuit

ONE of the favorite pastimes of this unsettled age is criticising the law and denouncing lawyers. Indeed, it has been a favorite pastime with many since the days of Cade's rebellion. It arises ordinarily from an unconscious jealousy of the men who play so large a part in the control of the state, from impatience with the rules which preserve the present institutions of society against those who would destroy them, or from lack of understanding of the nature and history of our jurisprudence and of what has been accomplished by the profession in shaping it to meet the needs of the times. In some cases, it is due, I think, to the fact that a writer or lecturer, without adequate information as to the institutions of his own country, delights in displaying his knowledge of the institutions of others. At present the criticism is more acute than usual, due in part to the fact that in many sections of the country there is a real need of reform in procedure, but in greater part to evils afflicting our social life with which the law has little, if anything, to do. We are told by our critics that the law is hopelessly antiquated, that the legal profession is recreant to its duty, and, by some, that the hope of the situation lies in the forcing of a new legal system by men outside the legal profession.

With much of this criticism I have little sympathy, and none with the idea that laymen are to reform the law. When doctors find a cure for cancer, when financiers learn how to prevent panics, when publicists eradicate the curse of sensationalism, I shall listen to them with more enthusiasm when they talk of legal reform; but so long as so much is left to be desired in other professions, I shall doubt the ability of their members to solve the problems of one with which they are not familiar. The widespread criticism of the law and its administration is a matter, however, which should challenge the attention of lawyers. Is it true that the law is antiquated and obsolete? Is it true that the profession has failed in its duty to make our institutions responsive to the needs of the times? Is there justification for the charge that in cleaving to antiquated procedure we have hindered the administration of justice and lessened men's respect for the law itself? Have the members of the bar a special duty with respect to matters affecting the progress of society, and are they performing that duty? These are the questions to which I propose very briefly to address myself in discussing "Social Progress and the Law."

There can be no question that there is a very real and vital connection between the progress of society and the law as it is administered by our profession. Not only does the law depend on social progress, but social progress depends in a very real sense upon our correct interpretation and efficient administration of the law. For the law is not a rule of conduct arbitrarily prescribed. Nor is it, as some popular writers seem to think, mere crystallized public opinion. The state has an organic life, and the law grows out of that life, determining the relationship of the individual members of society to each other and to society as a whole, and prescribing what must be the conduct of each in the interest of the common good. In other words, to use a trite expression, the law grows out of the life of the people; and as that life changes the law must correspondingly change. In a primitive state of society, it grows slowly and unconsciously through the slow growth of custom. In a rapidly advancing age it grows rapidly through judicial interpretation and through the conscious effort of society by legislation to adjust its institutions to its needs. But, whatever the stage of growth, it is manifest that, if the law as interpreted by the courts or prescribed by the legislature fails to keep pace with the growth and development of society, it must inevitably result in injustice and hardship to the individual and in hampering the progress of society itself. There is no more important duty resting on the legal profession, therefore, than the duty of seeing that the expression of the law keeps pace with the development of society; and probably the most serious charge that is made or that can be made against our profession is that we have failed in the performance of this duty. Is the charge true? My contention is that fundamentally, and especially with respect to the substantive law, the charge is not true—that while, of course, our institutions are not perfect and the profession has not solved all of the problems which have been presented to it, it has met these problems in a manner which should command the respect and gratitude of every serious student of our country's history, and that so far from being a cause for shame to the lawyers of America, the development of the law within this country during the last half century has been without a parallel in the history of the world.

And let us not forget that the changes which have taken place in our social life within the last

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half century have been of so fundamental a character as to test to the utmost the powers of readjustment on the part of the profession and of the law. Within this period the great strides of science and invention have not only revolutionized industry, but have revolutionized as well our very habits of life and processes of thought. Only a little over a hundred years ago, we had no railways, no steamships, no power-driven machinery. The cotton gin had not been invented. The automobile, the aeroplane, the submarine, the radio had hardly been dreamed of. Men lived and worked and thought very much as they had for five hundred years before. And within this comparatively brief period of a hundred years, and particularly within the last half of it, man has completely changed the world which surrounds him. With machinery he has increased a hundred fold the productive power of his labor. The elemental forces of nature,—the strength of the mighty rivers, the power of the lightning, the force of exploding gas, the ear and voice of the intangible ether—he has brought to his service. Barriers between man and man and nation and nation have been broken down. And with his triumph over time and space and the forces of nature, new relationships have grown up, new rights have come into being and new dangers have arisen to threaten him. As a matter of necessity the power of the state has been invoked to protect against the evils growing out of the new environment; the relationship of employer to employee has become something entirely different from what it was; our conception of the rights of private ownership has undergone a fundamental change; and dedication to a public use has acquired an entirely new meaning. It was the task of the American lawyer to adapt our institutions to these changes in the physical life and organization of society, and in our intellectual concepts which accompanied them, so as to protect the new rights of the individual and of society which had grown up, to guard against the new dangers which had arisen and to allow the greatest development in the history of the race to go forward unhampered by the legal forms and conceptions of an earlier day. I may be wrong about it, but I think that he has met this duty in a manner and in a spirit which entitle him to something better than the wholesale criticism which has recently been his lot.

Let him who regards the law as hopelessly antiquated and the legal profession as blind worshippers of the past, consider the evolution in recent years of the law of master and servant. The doctrines of contributory negligence and assumption of risk and the fellow servant doctrine, so important in that branch of the law in a simpler state of society, have been practically swept into the discard. Safety appliance acts have not only required the master under the severest penalties to adopt appliances for the protection of the employee, but have abolished the defense of assumption of risk where such appliances are not adopted. Employers' liability acts have abolished the fellow servant doctrine and have made contributory negligence a matter in mitigation of damages and not an absolute defense. And finally, workmen's compensation laws, now of practically universal adoption, have faced the truth that industrial accidents are risks of industry which, regardless of negligence, should be borne by industry, and not by the unfortunate individual workman who has been injured. With these have come child labor laws, laws safeguarding women and youthful employees and laws limiting the hours of labor in dangerous or important occupations. I have not the time, nor is it necessary in this presence, to trace the modification of legal conceptions which the adoption of these statutes has involved. But the fact that they have been adopted and have been held valid under the due process and equal protection clauses of the Constitution, is eloquent refutation of the charge that the law as we have developed it values property rights above human rights, and of the other charge that the Constitution as interpreted by the courts has placed the life of the country in a strait-jacket.

Equally eloquent are the statutes enacted to protect against monopoly. With the growth of industry and commerce consequent upon the introduction of machinery and improved methods of transportation and communication, there arose what was thought to be a real danger of the creation of a plutocracy, with attendant economic serfdom, through the monopolization of industry by great aggregations of capital. The preservation of individual initiative and the economic independence of the masses became a vital consideration. To meet this problem, anti-trust laws have been enacted by the federal government and most of the states, forbidding combinations in unreasonable restraint of trade and forbidding also unfair business practices, the result of which is to destroy fair and reasonable competition. These statutes have been upheld, and in a number of great decisions have been given an interpretation which permits the unrestricted growth of legitimate business fairly conducted, while restraining the activities of those who would ruthlessly create an "empire of business" upon the ruins of a free competitive system.

With the growth of organizations of capital came organizations of labor which introduced into our economic life the principle of industrial warfare. Against these there was invoked the statutes passed to prevent unlawful combinations of capital. It was soon realized, however, that organizations of laboring men, bound together for mutual helpfulness and to offset the advantage derived by capital from legitimate organization, were very different from organizations of capital in restraint of trade; and statutes have been passed recognizing the validity of such organizations. These statutes have been so construed as to guarantee to laboring men the right to organize, to bargain collectively and to strike. At the same time, the secondary boycott has been held unlawful, means have been found to hold labor unions accountable for injury unlawfully inflicted and to safeguard the rights of non-union employers and employees from interference by the unions. While much remains to be done, much has been accomplished towards safeguarding the rights both of employer and of employee and of eliminating the more glaring evils of industrial conflict.

Probably no problem of greater social importance has been presented than the regulation of public service corporations. During the half century that is past, an increasingly large number of enterprises have arisen which minister to the public. Because the service which they render is

a necessity to the public and because they are largely monopolistic in character, the power to fix their charges has conferred upon their owners what is in effect the power to levy a tax upon the community which they serve. The growth of these corporations at first threatened us with the socialistic experiment of government ownership and operation; for, of course, it is unthinkable that the public should be left at the mercy of private individuals as to matters which affect the public welfare. This problem, however, has been solved by the law without resort to socialism. Commissions have been created with power to regulate the charges of such corporations; and the principle has been established that not only corporations which enjoy the right of eminent domain, but all persons who devote their property to a public use, subject it to regulation in the interest of the public. Constitutional provisions have been interpreted to limit this power of regulation so that the property of the owner may not be confiscated under the guise of regulation, with the result that he who invests in an enterprise affected with a public use must submit to the regulation of his charges by a public commission, subject, however, to the limitation that the charges fixed may not be so low as to deny him a fair return upon his investment. Thus the rights of the public have been protected and private property and individual enterprise have been preserved.

These are but a few of the countless instances of the adaptation of the law to meet the changes in our industrial and economic life. Time would fail me were I to speak even briefly of the statutes enacted for the preservation of the safety, morals, health and general welfare of the people in other fields in this period of changing habits and changing relationships, or of the decisions under which these statutes have been almost uniformly upheld as not violative of constitutional guarantees. Building laws, traffic laws, machinery inspection laws, pure food and drug laws, laws regulating the sale of narcotics, laws regulating and finally prohibiting the sale of alcoholic beverages, laws protecting the public from swindling schemes in the sale of stocks and bonds,—these and hundreds of others manifest the effort of the law to safeguard society and the individual members of society from the dangers which have arisen in the growth of our complex civilization.

With the weakening of the home ties incident upon greater individual freedom, we have created special courts for dealing with juvenile delinquents and with the problem arising from domestic relationships. The growth of commercialized vice has been met with the passage of the Mann Act and with the passage of statutes having a similar purpose by many of the states. With the view of reclaiming prisoners as useful members of society have come parol and probation laws and the indeterminate sentence. A place for all of these has been found in our legal system; and those who fear that the Constitution is standing in the pathway of progress should reflect that but recently the Supreme Court has upheld a law designed for the betterment of the race but encroaching far upon the old ideas of personal liberty, a statute providing for compulsory sterilization of mental defectives.

Laws regulating the use and enjoyment of property which is strictly private, have been upheld under the police power, in an extension of the *sic utere tuo* doctrine of which the fathers would never have dreamed. Thus laws have been upheld which forbid the owner of lands near public watersheds to allow boughs, etc., cut from timber to remain thereon. The owners of cedar trees in the vicinity of apple orchards have been required to destroy them so as not to furnish a host plant for the cedar rust disease of the apple. The use of natural gas for purposes deemed wasteful has been forbidden. And finally the Supreme Court in two recent decisions has upheld city zoning laws limiting the use of property by its owners, in the interest of the safety, comfort and general welfare of the city. In the first of these cases the court very aptly said: "Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise."

When it is remembered that laws covering such a wide range of subjects have been enacted and upheld, not to mention laws establishing new and modern taxing systems and providing for graduated income and inheritance taxes, laws providing for direct primaries, laws regulating travel by air and the rights of the public in the intangible force made use of by the radio and the wireless telegraph, the charge, so far as the substantive law is concerned, that the law has not kept abreast of the times and that the legal profession have been recreant to their duty in this regard, seems to me to be not only unfounded but little short of absurd.

But to say that the law has kept pace with social progress does not mean, of course, that our legal system is perfect or that there are no problems remaining to be solved by the profession. In the nature of things the legal interpretation of rights must follow and not precede the conditions which give rise to such rights. Legal remedies are prescribed only after evils have arisen. Changes in the law are made only after the necessity for such change is demonstrated. And the rapidly changing conditions in recent years have given rise to many evils which must be met and to many problems which the legal profession must solve if society is to go forward.

There is the problem arising from the relationship of capital and labor. While much has been accomplished by the law in dealing with it, no one with any insight into conditions imagines that a satisfactory solution has been found. A situation resulting in intermittent industrial warfare in which contending factions fight out their troubles at the expense of the public cannot long endure. The use of injunctions and mediation boards are but temporary expedients. It is for the legal profession of America to devise some more enduring and satisfactory basis upon which the rights of capital and labor may rest. The agrarian problem, or the problem of farm relief is another,—how we may foster agriculture and regulate distribution so as

to give the farmer a fair return upon his labor and investment and preserve the independence and beauty of our rural life, without embarking upon socialistic experiments which will result in the ultimate ruin of our institutions. The problem of unemployment is another—how we may provide work for men made idle by the changes in and readjustments of industry and avoid the dole system, under whatever name it may be called, with its inevitable tendency to pauperize those who benefit by it and destroy in them the spirit of industry. The problem of transportation is another, —how we can adequately regulate our great railway systems without stifling individual initiative and without establishing in the regulating body an economic dictatorship over the various sections of the country with power to kill and to make alive. The problems presented by the commanding position in world affairs which we have come to occupy as a result of the late war, are others—how we may maintain our independence as a nation and keep ourselves clear of embarrassing entanglements, and at the same time use our great power for the preservation of international peace and the elimination of the burdens of national armaments.

I shall not discuss these problems or suggest any solution for them. Because of their highly controversial character, they do not offer a proper field for discussion by a judge. Merely to state them in this distinguished presence is to propound to you the riddle of America's future. Most of them are primarily economic problems, but they are legal problems also; for every one of them involves the relationship of the citizen to the state and of citizens as citizens to each other. In the solution of each of them, action by the state will be involved, new relationships will be created, new rights will arise, new remedies will be provided. They will be solved, not by the crusader or the theorist, not in the class room or in the cloister, but in the open conflict of American life, by the men who understand the history and character of our institutions and who have, I believe, a deeper insight into the forces operative in our social life than any other class or profession—the lawyers of the United States.

In reading the criticisms of law and lawyers I find that, while the charges are general, the specifications come down in most cases to a criticism, not of the development of the substantive law, but of the lack of development of the adjective or procedural law. And I am afraid that there is some ground for this criticism. While lawyers have formulated and interpreted statutes and applied the rules of the common law to meet the needs of our expanding life, all too often they have failed to apply the same liberal philosophy in dealing with the procedure in the courts. This is not to be wondered at, for men seldom see anything amiss with that with which they have been long familiar. Cherishing the thought that the law is the perfection of reason and that the procedure with which we are familiar is the perfection of the law, in all too many instances we have preserved the absurdities as well as the excellencies of the procedure bequeathed us by the fathers, and have failed to make it responsive to the needs of the very busy and practical age in which we are living. A distinguished publicist, himself a lawyer, has had this to say of us in a recent article:

> "The legal profession, lacking the pressure of public opinion, in the main, has failed in its trust to make law command respect. Most legislators are lawyers; they have given us too much government, they have given us too much regulation and commandment which is unenforceable and unenforced, distinguished from law representing our sovereign social will. The legal profession has failed to purge our systems of litigation and prosecution of the atmosphere of arenas for technical and pompous hot-air contests, and of rinks where justice skates on thin ice over the depths of the political pond; it has failed to cut through stuffy traditions and go straight at making justice itself more important than legal gesturing."

While I think that this picture presented by Mr. Richard Washburn Child is greatly overdrawn, I do think that one of the crying needs of the times is reform in procedural law, and that one of the great services which the profession can render to the cause of social progress is to simplify the procedure of the courts, to abolish technicalities and the cumbersome machinery which tends only to delay, and to provide a system which will go simply and directly to the only matter in which the court should be interested, the matter of doing justice between the parties. This is a subject, of course, upon which one could speak interminably, but I shall confine myself to a few suggestions, which will go far, I think, toward removing the basis of the criticism which is made.

In the first place, all formality with regard to the institution of action, either civil or criminal, should be done away with. In criminal causes, all of the learning about forms of indictment might well be forgotten and any indictment held sufficient which fairly apprises the accused of the charge against him and fairly protects him against further prosecution for the same offense. In all except the most serious offenses, indictment by grand jury should be dispensed with and prosecution initiated by information filed by the prosecuting attorney. In civil cases a pleading which fairly and simply states the facts upon which a cause of action or defense is based should take the place of the technical pleadings of the common law. Anyone who doubts the efficacy of such a reform has only to look to the practice under the Federal Equity Rules or to that of the states which have adopted the Field code, not to speak of the practice in England under the reformed procedure of 1873. The distinction between actions at law and suits in equity should be abolished; and equitable as well as legal relief should be granted when upon his pleadings a party shows himself entitled to either sort of relief at the hands of the court.

In the trial of causes much could be done to make the course of justice more swift and certain. The requirement of a unanimous verdict tends to corruption and delay, and serves no good purpose. Nothing need be feared from allowing a verdict by a three-fourths majority of the jury, when the judge has the power to set aside the verdict and grant a new trial when satisfied that it is wrong. When an able and impartial judge and three-fourths of the jurors are satisfied that a case should be decided in a certain way, there is no reason why three men should be allowed to stand in the way of the decision. In courts of equity, we permit the judge alone to decide the facts in cases of the greatest magnitude. On appeal, a majority of the judges decide the law in cases of the most far-

reaching importance. And I can perceive no sound reason in this practical age for continuing to require unanimity in verdicts in actions at law.

While I have great respect for the jury system as the best method which has ever been devised for deciding disputed questions of fact, I feel that in many states great improvement could be made in the method of submitting these questions to the jury for determination. Jurors are qualified to pass upon questions of fact. They are not qualified to pass upon questions of law or to carry in their minds lengthy, abstruse and complicated discourses on the law. To make the system efficient, therefore, in civil cases where the law is more or less difficult, the general verdict should be superseded by submitting to the jury questions involving the ultimate questions of fact to be decided, and the court should then apply the law to the facts as found by the jury and render judgment accordingly. This practice, which prevails in a number of jurisdictions, greatly simplifies the case for the jury, and in case of error of the trial court in applying the law, enables the appellate court to pronounce final judgment upon appeal.

Another change in the submission of the case is demanded in many jurisdictions. The practice of charging abstract principles of law embodied in prayers or requests should be abolished and the practice, followed in most of the federal courts, should be adopted of having the Judge, after the evidence and argument of counsed have been concluded, charge the jury on the whole case, showing them how the various issues arise on the evidence and declaring and explaining the law applicable thereto.

We should restore the common law right of the Judge to assist the jury in analyzing the facts, leaving, of course, the final decision thereon to the jury. No small part of the dissatisfaction with the jury system and the criticism of the verdicts of juries has arisen from the fact that jealousy of the power of the Judge has resulted, in many states. in the passage of statutes which make him little more than a referee in an intellectual contest or a moderator of a town meeting. Of course, judges are not perfect; but they have experience in the administration of justice and in the weighing of testimony which, in the nature of things, jurors cannot have. If they err or overstep the bounds of discretion, they are subject to correction by the higher courts; and to my mind there is no greater stumbling block in the administration of justice than statutes which strip the only disinterested lawyer connected with the trial,—whose sworn duty is to see justice done and who should have no other motive—of the power to assist the jury in analyzing the frequently complicated facts with which they are called upon to deal. If judges are not to be trusted, then our whole system is hopeless; but if they are trustworthy they should be given power sufficient to enable them to see that justice is done in their courts. It is nothing short of ridiculous that a judge should be given the power to set aside a verdict of which his conscience does not approve and at the same time be denied the power, before verdict, to analyze the facts for the benefit of the jury and thus aid them in arriving at a verdict which is proper. As one who is not and has never been a trial judge, allow me to say that one thing which as much as any other has maintained the confidence of the people in the federal courts is the power which the judge has in directing the course of the trial; and it will be a sad day for the administration of justice in the United States if Judges of the federal courts are ever deprived of this power.

Much of what I have advocated is already in process of adoption as a result of the efforts of the profession. In many states a simplified code of procedure has been adopted. In others, practice acts have abolished many of the technicalities of the common law. For the federal courts, statutes have been enacted, and rules adopted, providing for the transfer of suits wrongfully instituted at law to equity and vice versa; and another statute provides that judgments shall not be reversed for technical errors not affecting the substantial rights of the parties. Under the leadership of the late Chief Justice Taft, once a judge of your circuit, a judicial conference has been established which has done much to eliminate objectionable practices and to make of our federal courts a unified and efficient system; and similar judicial councils have been established in many of the states. One great reform, I think, is just in the offing, and that is a statute which will permit the Supreme Court to regulate by a system of rules the practice at law in the federal courts. No greater step forward has been made in legal procedure in the last half century than the adoption of the federal equity rules; and I feel confident that the conferring of the power on the Supreme Court to regulate the practice at law will be an even greater advance. It will not only furnish the country with a modern and efficient procedure in the federal courts, where a large per cent of its important litigation is tried, but will also serve as a model for the courts of the various states and will do more than a thousand lectures towards the reform of the procedure in their courts.

And, my friends, I am inclined to agree with the proposition that what we need is more than a mere reform of procedure. The fundamental need is a change in the mental attitude which all too frequently pervades the administration of justice. What some one has called the "sporting theory of justice" must go. In the olden days if I had a controversy with my neighbor over a tract of land or with the state over a question of guilt or innocence, the favorite method of trial was by wager of battle. I selected a champion. My adversary selected a champion. And in the presence of the assembled populace they mounted their chargers and fought out the matter for us, and the decision went to him whose champion was the stronger or more skillful. Too much of the same spirit has pervaded trials at law down to the present day. An important case is a great public spectacle. Contending counsel are there as champions of their clients; the judge sits to see that the rules of the game are observed; newspapers with screaming headlines play up every human interest feature; and all too often the real object of the trial, the ascertainment of truth and the doing of justice, is lost sight of in the enthusiasm of the conflict. This "sporting theory of justice" did well enough in pioneer days where life was simple; but it has no place in the legal administration of today. Courts must realize that they sit for the ascertainment of truth and the doing of justice, and not to apply

technicalities. Lawyers must realize that their first duty is to the law and to the state whose life it is, and that a victory won at the expense of justice is not a matter of pride but a matter of shame. Laymen must realize that the processes of the courts are not to be invoked except for the preservation of rights or the redress of wrongs, and that when invoked they are not to be converted by exploitation of the press into means of entertaining the morbid elements of society.

This brings me to a subject which must inevitably be faced in any discussion of the law's relation to social progress, and that is the crime wave which confronts the country and the widespread disrespect for and disregard of law. Undoubtedly, as the President has said, this constitutes one of the gravest problems which confront the country; for the first duty of government is the maintenance of peace and order, and when any government fails in this vital matter, its days are numbered. I do not think, however, that the crime wave or the disrespect for law can be laid at the door of the law or of the legal profession. In this age of changing standards they are a part of the revolt against authority and the standards of the past. One of the by-products of our scientific age has been the growth of materialism and a loss of faith in the spiritual standards by which the fathers lived. Men have become intoxicated with the new freedom which has come to them in their triumph over the forces of nature, and are impatient of all restraint. Modern inventions have increased the lure of crime, and the weaker members of society, without the moral restraint of the standards which they have abandoned, have been unable to resist its temptation.

But while I do not think that the law or lawyers are responsible for the crime wave or the disregard of law, I do think that they are charged with a grave responsibility with respect to law observance and enforcement. In a democracy, the lawyer in all things relating to the public welfare is the natural leader of his community. It is he who interprets the life of the state to his fellow citizens. It is he who advises his neighbors as to their rights. And it is from him and his conduct that the attitude of the community toward the law is very largely derived. For every controversy settled in the courts, a thousand are settled in the offices of lawyers. For every man who hears a judge expound the law, a thousand are advised as to the law and as to their undertakings by members of the profession. And where the members of the bar observe and respect the law themselves, where they teach their clients to obey it as a duty which they owe the state, there is little trouble with the crime wave or with disrespect for law. But where any considerable part of the bar countenances violation and disregard of the law, where the practice of the law to them means, not the preservation of rights, the redress of wrongs and the guidance of their clients in the rules which the law has prescribed, but the evasion of these rules and the cheating of justice, the community is quickly affected by their attitude.

Lawyers, then, can do much towards enforcing the law and restoring respect for it. They can make the courts more efficient through the reform of procedure. They can see that the judiciary is removed from politics and that only men of learning, efficiency and integrity are placed upon the bench. They can change the attitude of the public towards the administration of justice by making trials less a display of forensic skill and power, and more of an inquiry into truth. They can, by virtue of their natural leadership and their relationship to their clients, inspire, by example, respect for and obedience to the law; and they can and should weed out of the profession those who would prostitute it to ignoble purposes. Let there be an end of all talk of nullification among members of the profession and let us have no more expression from them of such sentiments as that the law must be respectable before it is respected. The law is respectable whether we approve it or not. If we do not approve it, we have the right to advocate its repeal; but so long as it remains the law, it is the expression of the sovereign will of the people upon which, in a country such as ours, all government must rest. And he who fails to respect and uphold it as such has failed in the fundamental duty which he owes to his country and her institutions.

In all social progress there is as vital a need of the conservative as there is of the reformer. The great Apostle St. Paul, who was certainly one of the leading progressives of his day, advises not only that we try all things but also that we hold fast to that which is good. Too often the reformer of today wishes us to try all things (using the word "try," however, in a very different sense from that in which it is used in the translation of the great apostle's precept); but he utterly ignores the remainder of the injunction. He frequently desires to hold fast to nothing; and the mere fact that an institution exists is reason sufficient to his mind why it should be destroyed. In thinking, therefore, of the contribution of the law and lawyers to social progress, let us not overlook the conservative contribution which they have made, the influence which they have had and are having in the preservation of the institutions upon which the greatness of our country has been built.

And right at this particular time I am not certain that conservation is not the most important factor of social progress. In the situation in which we find ourselves there is indeed need for vision, for the understanding which will enable us to see through the economic, industrial and political problems which confront us, find solutions for them and interpret these solutions in terms of law. There is need of character, for the rugged quality of soul which will do right because it is right and will respect the law because it is the law. But probably the greatest need of all is the need for faith, for faith in America, faith in her form of government, faith in her fundamental philosophy.

Our distinct contribution to civilization has been workable democracy. In ancient Greece and Rome and in the cities of the middle ages there were modified forms of democracy, but all of them were confined to a very limited territory and all eventually gave way to some other form of government. Philosophers taught that democracy was the weakest of all forms of government and was workable only in small and sheltered communities. Our nation came into being proclaiming the gospel of democracy in the noble words of the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain

unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed."

The vice and the weakness of democracy has always been the tyranny of majorities. Led on by the demagogue they have ignored the rights of individuals and have subverted the fundamental institutions of the state. After many disastrous experiences, in which our infant nation was brought to the verge of ruin and disaster, we drafted a constitution which so far has preserved us from the fate of democracies in ancient times. The experience of our fathers in England in their struggles with the Crown had developed the idea that there were certain rights which belonged to the individual as such, which could not be taken from him even by the king,—the right not to be deprived of life, liberty or property but by the law of the land, the general law, "which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial," the right to a fair trial by a jury in open court and to be confronted by the accusing witnesses, the right to have one's imprisonment inquired into by writ of habeas corpus, the right to be secure in one's person and effects from unreasonable searches and seizures, etc. And in our Constitution we protected these fundamental rights of the individual, not only against the power of the executive but also against the entire power of the government. By later amendment the fundamental rights of individuals have been protected from encroachment by the states under the clause which forbids the states to abridge the privileges or immunities of citizens of the United States, or to deprive any person of life, liberty or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws.

In this way we have built up a government which is in truth a government of laws and not a government of men, a government under which personal security, personal liberty and private property are protected not only against the violence of the mob, but also against the ill-advised action of majorities led on by greed or malice or fantastic theory. And under this governmental system, and the popular charter which created it, described by Mr. Gladstone as the greatest document ever struck off at one time by the mind and purpose of man, democracy in America has flourished. We have spread from a narrow fringe along the Atlantic until our territory reaches from ocean to ocean and our flag flies over distant islands of the sea. From a bankrupt treasury and a population less than that of the city of Chicago, we have grown until 120 millions of people live under the Constitution, America has taken her place at the forefront of the nations and America's dollar is the standard of value for the world. And with it all, we have held to the ideal of those who won our independence. We have preserved the equality of men before the law, so that Americanism has come to stand for the open door of opportunity and the principle of the "square deal" to every man.

But in this hour of our country's greatness a strange thing has happened. Instead of faith and hope and courage abounding, we are confronted with doubt and fear and pessimism. On the one hand, we have those who question the philosophy underlying our government; on the other, false prophets who in the name of that philosophy would destroy the governmental structure which alone has made it workable. There are those who challenge the virile philosophy of individual rights and would commit us to the mediocrity of socialism. There are others who, prating of the rights of man, would give us rule by a class and would strike down the constitutional guarantees under which the rights of men are protected. And as the Savior said of false prophets, who come like wolves in sheep's clothing, they have deceived many.

Nothing, in my judgment, is more important to the continued progress of society than to meet this false philosophy successfully and to preserve constitutional government from those who would destroy it. And it is here, I think, that the lawyer of today can render the greatest service to his country and to the cause of social progress. It is for the Supreme Court to interpret the Constitution, to interpret it so as to preserve our institutions, to protect the rights of the individual, and at the same time to uphold the right of society to meet the evils which arise through changing conditions. It is for the judges of all courts, state and federal, to protect the rights of men under the Constitution. And it is for lawyers everywhere to interpret the Constitution to the people and bring them into a sympathetic understanding of its provisions and of the philosophy upon which it is based. Let the poor man, who would strike down those of its provisions which stand in the way of laws advocated by the demagogue, understand that it constitutes his surest safeguard against oppression and wrong at the hands of the rich and the powerful. Let the rich man who would violate its provisions understand that it is his surest protection against the action of the mob. Let the reformer who chafes at its restraints understand how under it we have achieved the greatest success ever attained in all the long history of men's efforts to govern themselves. There is no more patriotic or important undertaking than that of the members of the American bar to enshrine the Constitution in the hearts and minds of the American people. If they are successful in their efforts, they will have done more, I think, for the cause of social progress than could be accomplished by a century of criticism.

America looks to the bar today for leadership, as she has always looked. It was the lawyers who led us in our struggle for independence. It was the lawyers who framed the Constitution, secured its adoption and who gave it an interpretation that breathed the breath of life into the Nation. And it has been the lawyers who, not only upon the bench, but at the bar, in the legislature and in executive positions, have moulded our institutions to meet the changing life of our people. The charge that they have allowed the law to become antiquated and obsolete cannot be sustained. While changes are needed in procedural law, these changes are already in process of realization and much has already been accomplished. Great problems confront the nation, but the bar of America will rise to meet them, as it has always risen in the past. Henry and Hamilton and Lincoln and Black and Chase and Field; Miller and Cooley and Harlan, and White and Taft; merely to mention their names is to epitomize the course of American history. There is no reason to think that their successors are lacking either in the patriotism or in the ability which made them and their associates the leaders of our national life in their generations and which enabled them to preserve our institutions and adapt them to the continued progress and development of our people.

THE NEW BENCH OF THE WORLD COURT

Hon. Frank B. Kellogg Elected to Serve Full Term of Nine Years—Will Also Sit for Remainder of Unexpired Term of Charles Evans Hughes—Candidates in Election—Five Judges Chosen Again—The New Judges and Deputy Judges—The New Bench as a Whole

By Manley O. Hudson
Bemis Professor of International Law at Harvard University

THE Permanent Court of International Justice is now nine years old. The terms of the present judges and deputy-judges expire on December 31, 1930, and on September 25, 1930 a new roster of judges and deputy-judges was elected by the Assembly and Council of the League of Nations, for a period of nine years beginning January 1, 1931. Judge Charles E. Hughes resigned on February 15, 1930, upon his appointment as Chief Justice of the Supreme Court of the United States, and on September 17, 1930, Frank B. Kellogg was elected his successor, to serve for the three and a half months of the unexpired term. Judge Kellogg will then succeed himself for the new term of nine years.

The Court has held nineteen sessions since the original election of the judges in 1921; in this period, it has handed down sixteen judgments, eighteen advisory opinions and nine important orders. It will meet for a twentieth session, late in October, to consider the Franco-Swiss Zones Case. The new bench will begin its first session, for the purpose of reorganization, on January 15, 1931, as provided in the Rules of Court.

Candidates in the Election

In nine years, the election procedure has now been tried six times; two general elections have been held, and four spcial elections to fill vacancies. The candidates in these elections are nominated by national groups in the Permanent Court of Arbitration created in 1899, and by similar groups in countries not represented in that body. For the second general election on September 25, 1930, sixty candidates were nominated, including six Americans: Frank B. Kellogg was nominated by the national groups of Denmark and the United States; Roscoe Pound was nominated by the groups of Australia, Great Britain and Siam; Elihu Root was nominated by the group of Nicaragua, but declined to be considered as a candidate; James Brown Scott was nominated by the groups of Cuba and Ecuador; George W. Wickersham was nominated by the group of France; and John H. Wigmore was nominated by the groups of the Dominican Republic and Panama, but declined to be considered as a candidate. The American group in the Permanent Court of Arbitration, consisting of Newton D. Baker, Roland W. Boyden, John Bassett Moore and Elihu Root, nominated M. Adatci (Japan), Judge Anzilotti (Italy), Judge Huber (Switzerland), and Mr. Kellogg (United States); all of its nominees were elected except Judge Huber, who declined the candidacy.

Procedure in the Election

The second general election was greatly facilitated by the increase in the number of judges from eleven to fifteen, effected by the Assembly on the proposal of the Council under Article 3 of the Court's Statute. In 1921, the election took three days—in 1930, it was completed in one day. In 1921, forty-two members of the League of Nations voted in the Assembly—in 1930, fifty-two members voted. In 1921, eleven ballots were taken in the Assembly—in 1930, seventeen ballots were required. In 1921, it was necessary to set up a joint conference to reconcile the views of the Assembly and the Council—but in 1930 this was not necessary.

The Assembly and the Council meet for the election simultaneously, the former in public, and the latter in private session. To be elected, a candidate must have a majority vote in both bodies. In 1930, on the first ballot the Assembly gave a majority to fourteen candidates who were also voted for by a majority of the Council, and thus elected. This surprising amount of unanimity was partly due to the fact that the election was held relatively late in the session of the Assembly, after the delegates had had ample opportunity for conferring with each other. Judge Kellogg was elected for the new nine-year term after the first ballot in the Assembly, having received thirty-five votes. The United States took no part in the election, as the protocol for the adhesion of the United States, of September 14, 1929, has not come into force.

Five Judges Reëlected

Five of the judges newly elected have already served as judges of the Court during the first period of nine years, and their presence will serve as a guarantee of continuity in its work.

Judge Rafael Altamira (Spain), who was born in 1866, has had a distinguished career in Spain, and has lectured in both North and South America. Formerly a professor of the history of Spanish law at the University of Oviedo, he is now professor of law at Madrid, holding a chair especially devoted to "the civil and political institutions of America." He has been the President of the Ibero-American Institute of Comparative Law, is the author of many legal and historical works, and served before his first election as Spanish arbitrator on an international commission for mining disputes in Morocco.

Judge Anzilotti (Italy), who is now the able President of the Court, will continue to serve as

judge during the next nine years. Born in 1869, he has been for thirty years a distinguished professor of international law, at Florence, at Palermo, at Bologna and at Rome. He was formerly frequently called upon to advise the Italian Ministry of Foreign Affairs, and acted as Italy's counsel in several cases before the Permanent Court of Arbitration. In 1920, he became Under-Secretary General of the League of Nations, and while serving in that capacity he was charged with the preparation of the Statute of the Permanent Court of International Justice. He was also the founder of the *Rivista di Diritto Internationale*. During the past nine years, no judge of the Court has been more devoted to its work than Judge Anzilotti, none has been more regular in attendance, and to none is more credit due for the success which the Court has achieved.

Judge Antonio S. de Bustamente (Cuba) is one of the most distinguished lawyers of North America. Born in Havana in 1865, he has been for forty years a professor of international law at the University of Havana, and has held many high offices in the Republic. In 1907, he was a delegate to the Second Peace Conference at The Hague, and in 1919, he played an important role as one of Cuba's representatives at the Peace Conference in Paris. In the Conference of American States, he is justly celebrated, also, and his draft of a Code of Private International Law, adopted in 1928 as the "Bustamente Code," is now in force in several American states. The author of numerous volumes, he is also Director of the *Revista de Derecho Internacional;* his book on *The World Court* has been widely read in the United States.

Underwood & Underwood.

HON. FRANK B. KELLOGG
Recently Elected Judge of Permanent Court of International Justice

Judge Henri Fromageot (France) is a veteran in the field of international arbitrations and adjudications. Born in 1864, he was a student in France, Germany and England. He took part in numerous cases before tribunals of the Permanent Court of Arbitration and Hague Commissions of Inquiry, and for nine years he was president of the Anglo-American Arbitral Tribunal for pecuniary claims. He was for many years jurisconsult to the French Ministry of Foreign Affairs. No one has had a wider experience in international conferences than he; from the Second Hague Conference in 1907 down to the Tenth Assembly of the League of Nations in 1929, at which he was first elected judge, he was a familiar figure in such conferences, always detached, resourceful, sagacious and serene.

Sir Cecil Hurst (Great Britain) was also first elected judge in 1929, and has now been re-elected. Born in 1870, he spent a large part of his active life as legal adviser to the British Foreign Office. His career largely parallels that of his French "opposite," Judge Fromageot, and his experience in international arbitrations and in international conferences covers the same quarter-century. Since the Second Hague Conference in 1907, he has been one of the British representatives at most of the important conferences; he was one of the draftsmen of the Covenant of the League of Nations, and he was a tower of strength in every Assembly of the League of Nations until he was elected judge. His work in international arbitration has been almost as continuous, and he has frequently acted as counsel for the British Government before the Permanent Court of International Justice. He was also one of the founders of the *British Yearbook of International Law.*

Two Deputy-Judges Elected Judges

Two deputy-judges have now become judges. As they have frequently been called upon to sit on the Court during the past nine years, its procedure is very familiar to them. Judge Demetre Negulesco (Roumania) was born in 1875, and had a long judicial career in Roumania, followed by incumbency in numerous public offices. He was for many years professor of law at the University of Bucharest, and is one of the principal legal authors in his country. Prior to his election as a member of the Court, he was delegate of Roumania to the first and second Assemblies of the League of Nations, and in that capacity he had part in framing the Statute of the Permanent Court of International Justice.

Judge Wang (China) has been the youngest member of the Court during the past nine years, and will continue to have that distinction during the next nine years. Born in 1881, he was educated in China, Japan, the United States, and England, and devoted several years to a study of comparative law in France and Germany. His translation of the German Code into English—probably the most prodigious feat performed by any lawyer of the present generation—has become the standard translation for use in English-speaking countries. From his youth, he was an adherent of the Chinese nationalist movement led by Dr. Sun Yat Sen, and he has been one of the most prominent leaders in the present Chinese government. He has filled many offices in China, among them that of judge of the Supreme Court, Minister of Foreign Affairs, Minister of Justice, and President of the Council. He was also president of the Commission for the Codification of Laws, and has borne a laboring oar in the modernizing of Chinese laws. In 1921, he represented China at the Washington Conference.

The New Judges

Of the new judges, none is more distinguished than M. Mineitciro Adatci (Japan). He has had a brilliant career in the Japanese diplomatic service, in which he reached the high post of Ambassador at Paris, from which he recently resigned. He has borne a responsible position in most of the international conferences of the last decade, and few, if any, persons living have a greater knowledge of the League of Nations. He was a representative of Japan at the Paris Peace Conference, where he assisted in drafting the treaties for the protection of racial, linguistic and religious minorities. In 1920, he served as a member of the Advisory Committee of Jurists which drafted the Statute of the Permanent Court of International Justice. For several years, he represented Japan on the Council of the League of Nations, where he was frequently called upon to act as arbitrator in international disputes. He was made Permanent Chairman of the Committee for the Settlement of International Disputes set up by Poland, Estonia, Latvia and Finland. In the Assembly of the League of Nations, also, he has been very prominent and no person in the Assembly during recent years has been listened to with greater respect.

The election of Jonkheer W. J. M. van Eysinga (Netherlands) as judge, will be hailed with delight everywhere. Born in 1878, he is known chiefly as a much-beloved professor of international law at Leyden, and as a valuable collaborator in the work of the Assembly and other international conferences. In 1919, he represented his government at the Paris Peace Conference where he took special interest in river questions, a field in which he is an expert. For many years he has been a member of the Central Commission of the Rhine, and has acted as a judge of appeal in civil and penal cases relating to the navigation of the Rhine. Since its beginning, he has been active in the work of the Communications and Transit Organization of the League of Nations, and he has several times been called upon by the Council in matters relating to communications by river and rail. In 1921, he was arbitrator of a dispute between Germany and the Netherlands. In 1926 and 1929, he was president of the conferences of signatories of the Protocol of the Court, and in that capacity he presided at the drafting of the Protocol for the Adhesion of the United States, of September 14, 1929. In 1930, he was the head of the Netherlands' delegation at the First Conference for the Codification of International Law. In training and experience, as well as in temperament, he has every qualification to act as a judge of the Court.

M. Gustavo Guerrero (Salvador) will be another judge who will bring to the Court a thorough knowledge of the League of Nations. Born in 1877, he has held many of the highest offices in his country. After some years of service as a judge, he entered the diplomatic service, and has represented Salvador as minister at Rome, Madrid, and Paris. In 1927, he was Minister of Foreign Affairs, and at other times he was Minister of Education and Minister of Justice. He has been a delegate to every Assembly of the League of Nations, and was president of the Tenth Assembly. The Assembly and Council have frequently called on him to act as *rapporteur*, both in arbitral and in legislative matters. He took part also in the Central American Conference at Washington in 1922, in the Sixth International Conference of American States at Havana in 1928, and in the First Conference for the Codification of International Law at The Hague in 1930.

Mr. Frank B. Kellogg (United States), born in 1856, attained prominence as an able and active prosecutor of corporations in the days of anti-trust feeling in the United States. In 1917, he was sent to the Senate by Minnesota, and played an active but moderate role in the Senate's consideration of the Treaty of Versailles. In 1912-1913 he was president of the American Bar Association, and has long taken an active interest in its work. In 1924, he went to London as Ambassador of the United States, and was called back from that post to become Secretary of State in 1925. He brings to the Court not only his experience in the offices he has held, but also the enormous prestige of the fact that it was due to his insistence that the Pact for the Renunciation of War was signed at Paris, on August 28, 1928; for though it is known officially as the "Pact of Paris," that instrument is more widely known as the "Kellogg Pact."

Baron Rolin Jacquemyns (Belgium) is another veteran of service in international conferences. He was a delegate to the First Peace Conference at The Hague in 1899. A prominent barrister at Brussels, he had judicial experience as a member of the Supreme Council of the Congo when it acted

(*Continued on page 760*)

GUESTS TELL OF VISIT TO AMERICAN AND CANADIAN BAR ASSOCIATIONS

Leading Members of Party of European Lawyers Which Recently Visited United States and Canada Write Letter to Law Times of London, Expressing Appreciation for Cordiality of Welcome, Elaborate Arrangements for Entertainment and Comfort, and Constant Kindness and Consideration—Declare Visit an Unqualified Success From Their Point of View—One of the Party Writes Account of the Trip for Same Publication

(From The Law Times, London, Issue of Sept. 20.)
London, 17th Sept., 1930.

To the Editor of the *Law Times.*

Dear Sir—The party of lawyers who left England on the 25th Aug. to pay a visit to Canada and the United States of America on the invitation of the Bar Associations of these countries have now in mid-September returned to England, having travelled far and seen many men and cities. Throughout we have been received as representing the Bench, the Bar, and the solicitors of Great Britain, and to the best of our ability we have endeavoured to fill this responsible position.

In Canada, representatives both of the Dominion and the Provincial Governments as well as of the Judiciary and the Legal Profession joined in welcoming us in the kindest manner, and the circumstance that the President of the Bar Association was also Prime Minister of Canada lent additional distinction to the occasion. In the United States the President did us the signal honour of receiving us at the White House, and the Chief Justice of the Supreme Court was present and delivered an address at our ceremonial reception in Chicago, while we also enjoyed many opportunities of meeting eminent Federal and State Judges and leading members of the Bars of the great cities which we visited.

We should like to be allowed to say in a public manner on behalf of the members of our party that we were received everywhere—in Quebec, Montreal, Ottawa, Toronto, Niagara, Buffalo, Detroit, Chicago, Washington, Annapolis, Baltimore, Philadelphia, New York, and Boston—with the greatest cordiality and the most friendly welcome. The most elaborate arrangements had been made for our entertainment and comfort, and the constant kindness and consideration of both our Canadian and our United States hosts could not have been surpassed.

We are well aware that to many of those whom we met in the course of our travels special thanks are due either in connection with the arduous work of organising our reception and entertainment or in respect of kindness shown to individual members of our party. Endeavour has been made to send separate thanks in every case, but it will readily be understood that during such a journey opportunities for correspondence were rare, and if anyone has been overlooked we wish to express the hope that he or she will add to the great generosity with which we have been received by pardoning our omission and taking the will for the deed.

We all of us felt when our homing ships turned eastwards that we were leaving numerous trans-Atlantic friends behind as well as taking with us many most pleasant memories, and so perhaps, we may be allowed to add that from our point of view at least, the visit was an unqualified success.

We remain,
Yours faithfully,
DUNEDIN.
WILLIAM A. JOWITT.
ROGER GREGORY.

An Account of the American Visit By One of the Pilgrims

(From The Law Times, London, Issue of Sept. 20.)

I HAVE done the pilgrimage to Canada and the United States of America with the delegates from the Bench, Bar, and solicitors of England, Scotland, the Irish Free State, and France, and the outstanding feature in my mind is the overwhelming hospitality of our Canadian and American brethren and their keen appreciation and the lasting effect of the reception given to them when they visited these shores in 1926. Very few of the delegates from England had crossed "the herring pond" before they made the voyage, which commenced on the 5th Aug. last, but they were filled with the spirit of adventure which caused so many of their race in the past to cross the great stretch of grey water which leads to the Gulf of St. Lawrence, and they were prepared to endure all the trials undergone by the hardy adventurers of long ago in getting to the New World. The conditions of life on board the Canadian Pacific steamship *Duchess of Atholl* were by no means so arduous as those under which the Pilgrim Fathers made their famous trip to America, but a choppy sea, rain, fog, and incidental delay made the adventure seem at times a real one for some of them.

The pilgrims were in many cases unknown to one another when they met at Waterloo, and it took a little time for them to become acquainted, but the party on the whole became a very friendly one.

At last, after what seemed many days, the fog, which had considerably delayed us, cleared away, and the sun shone and we saw the inhospitable looking shores of Labrador in the distance. There was an exodus from cabins and bunks as we threaded the Straits of Belle Isle, and we suddenly discovered faces we had never seen before and wondered how their

owners had got on board. Some of us at this time saw the Northern Lights and others declared that they had seen whales, porpoises, and even seals. In fact, imagination ran riot. We did, however, see two icebergs.

We had, whilst on board, a most interesting address from Sir John Simon on the subject of Wolfe and Quebec, and the view of the city and the Heights of Abraham as we sailed up the St. Lawrence was superb. We were some twenty-four to thirty hours late in arriving at the ancient French Canadian city, and the luncheon by the Prime Minister and Government of the Province of Quebec, and also the garden party which was to have been given by the Lieutenant-Governor of Quebec, had to be abandoned. We were, however, enabled to pay a hurried visit in motor-cars to the Heights of Abraham and the principal places of interest in the city, and were shown, *inter alia*, the spot where the victorious general landed and the place where he fell.

After spending about an hour in Quebec, where we were met by our friend, Mr. Duncan Campbell Lee, of the English and American Bars, we left the Palais Station in special trains for Montreal and arrived there in time for the special Convocation of McGill University for the conferring of degrees upon, amongst others, Lord Dunedin, Sir John Simon, and Sir Boyd Merriman. The last named interested his audience by informing them that when he left school he went into a solicitor's office, and thus never had the benefit of a university education and had no university degree. This he had always regretted, and therefore he appreciated, he said, perhaps more than the others the honorary degree of Doctor of Laws then conferred upon him. In the evening a wonderful dinner was tendered to us by the Bar of Montreal at the Windsor Hotel, and it was there that Lord Dunedin, who had by this time had just about enough of the continual references to the common law of England, made a great speech in English and French, in which he noted that both the French Canadians and his brother Scots had eschewed the intricacies of the English common law. After the banquet many of us were entertained by our Canadian friends at their clubs and houses, and I fear that, as we left on the following morning by the 8:55 o'clock train for Ottawa, many of us saw very little of bed that night.

It was at Ottawa that, after lunch at the Chateau Laurier Hotel with the County of Carleton Law Association, we were taken to the parliament buildings, and a wreath, brought by the secretary of the Bar Council from England, and made by disabled British soldiers, was placed by the leaders of the delegation upon the tomb of the Unknown Warrior. In the afternoon we attended a garden party given in our honour by their Excellencies the Governor-General of Canada and Viscountess Willingdon at Government House, and in the evening we were the guests of the Canadian Bar Association at a banquet presided over by the new Premier of Canada, the Hon. R. B. Bennett, K.C. At midnight we left for Toronto by special train, arriving there in time for breakfast. This was the first experience of most of us in spending a night on the kind of train we had previously seen depicted on the "movies." The novelty of our surroundings and the coloured attendants made getting to bed quite a business. We, however, managed to get some sleep notwithstanding the rattle of the train and the frequent hooting, and awoke next morning in Toronto.

On our arrival at the enormous and very comfortable Royal York Hotel, we were met with a large packet of invitations, and each member of the delegation was presented with the badge of the Canadian Bar Association. We were made honorary members of most of the clubs in Toronto, and the hospitality shown to us by the individual members of the association and by the association itself was almost embarrassing. What with luncheons, dinners, receptions, dances, garden parties, private entertaining and motor drives, we had hardly a spare moment till Sunday came, on which day there were no official functions, although the individual Toronto lawyers kept us quite busy.

Toronto is semi-dry. The toasts at the banquets were drunk in ice-water, but private individuals can and do get permits for whatever liquid refreshment they may desire, and they certainly made every effort to satisfy the wants in that direction of those members of the delegation who were fortunate enough to be their guests.

On Monday the 19th Aug., we arrived at Niagara. We were all very much impressed, and inspected the waters (some of us in the steamship *The Maid of the Mist*) from all angles. A prominent citizen of Niagara, from whose beautiful house wonderful views of the falls can be seen, invited us to dinner in the evening, and we were during the day shown the extraordinary power plant and Niagara-on-the-Lake and the new Welland Ship Canal.

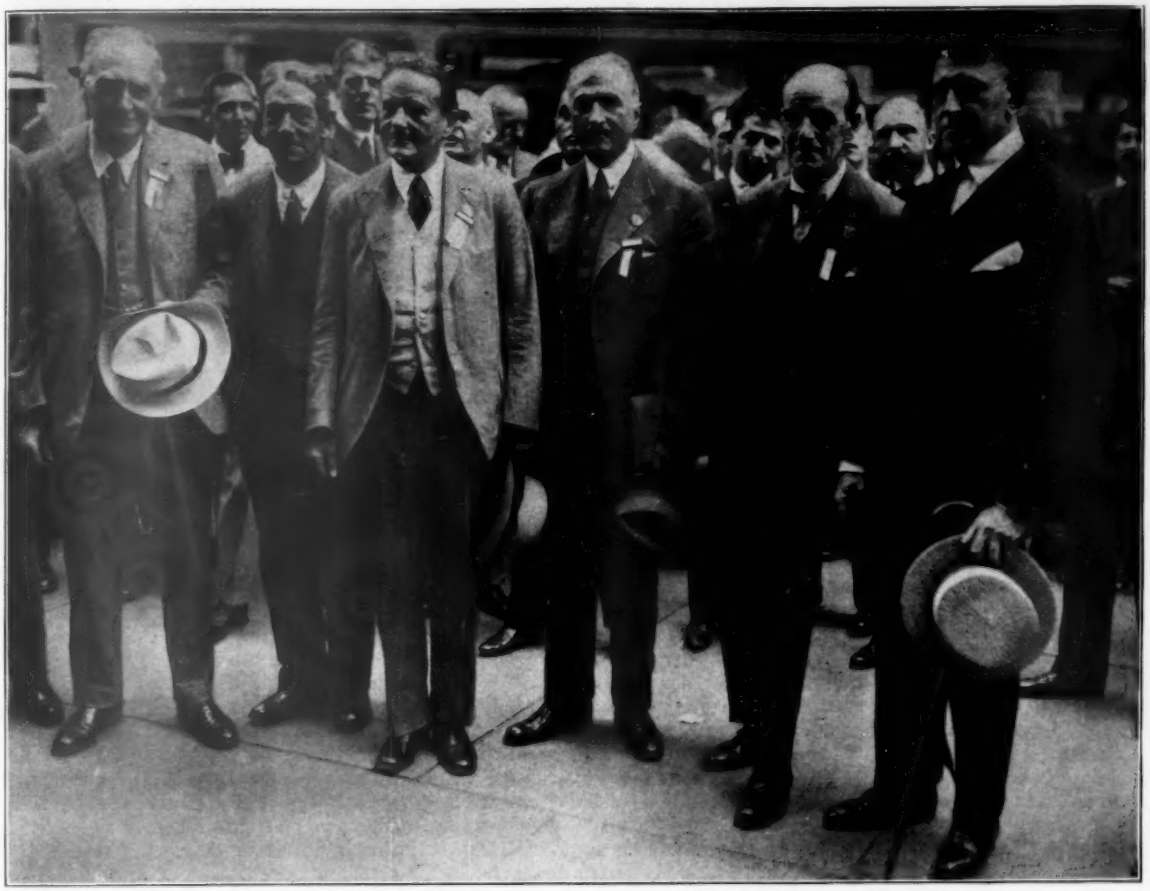
It was here that we said farewell to our Canadian brethren, whose hospitality and kindness had made such an impression upon us.

By this time the number of speeches delivered by our hosts and ourselves had reached alarming proportions, but, in fact, they were few in number compared with those which were delivered in the United States.

At 9:30 a. m. on the 19th Aug., we were taken in charge by representatives of the American Bar Association, and off we went for a motor trip via Falls View Bridge to the American Falls, and thence via Fort Niagara to the Country Club at Lewiston, New York State, where we were entertained at luncheon by the lawyers of Buffalo. After this the motor trip was continued via Niagara Gorge to the Statler Hotel at Buffalo, where good friends met us, and took many of us in their cars through the city to the various buildings and places of interest. Buffalo is a huge industrial centre with an extremely mixed population. The main residential avenue of the city contains a series of palatial houses in which live not only the merchant princes but also some of the most prominent lawyers. This street is intimately connected with episodes in the lives of at least three presidents of the United States. Throughout our tour we were constantly surprised at the position and influence in the country of the legal profession, and their wealth was apparent from the houses and style in which so many of them live. It was at Buffalo that we received badges telling the world and sundry that we were "members of the Erie Bar Association."

At seven o'clock in the evening we boarded a lake steamer on Lake Erie, on which we dined and spent the night. This ship had accommodation for sleeping 1,000 passengers and it reminded one very much of the "Show Boat" of Drury Lane fame, especially when an excellent jazz band began to play "Old Man River" in the great saloon, and the passengers joined in the dance which followed.

Detroit is at the far end of Lake Erie from Buffalo, and we arrived there after breakfast on the morning of the 20th Aug. Some of us "Members of the Craft" there visited the wonderful Masonic Temple



Prominent Representatives of Foreign Bars Visit Independence Hall as guests of Law Association of Philadelphia. From left to right are Justice Talbot, of England; Justice Macnaghten, of England; Lord Tomlin, of England; M. Henri Decugis, of France; Lord Macmillan, of England; and Justice Owen J. Roberts of the United States Supreme Court. Courtesy of Philadelphia Inquirer.

which has been erected at a cost of seven million dollars, and others went for a motor drive to Belle Isle Park. We all had luncheon at the Golf Club as guests of the Michigan lawyers. At every one of these luncheons and dinners we met not only famous attorneys, but also famous judges, and they interested us much with the information they gave us concerning legal procedure in America. Many of our hosts found it difficult to understand the functions respectively of barristers and solicitiors, but we were told that in their big centres there has come into existence a system under which certain lawyers specialise in various subjects and work and are employed by other lawyers. One astonishing phase of the system under which certain judges are elected to the Bench by the popular vote of their fellow citizens is that a man may be a judge one day and come back to practice the next day and go on repeating this procedure. He is still known as and called "Judge" after he has left the bench and returned to practice.

We could not leave Detroit without a visit to the Ford Motor Car Works at Dearborn, so off we went to see the said plant, attended by an escort of "Traffic Cops" who accompanied us whenever we went forth in the various American cities visited by us and who vigorously sounded their hooters and held up the extraordinary traffic and made our passage through it quite easy. At the Ford works we were shown the process of making a Ford motor car from A to Z, and were much interested in the said process and the enormous army of workmen employed at the works, all of whom seem to possess motor cars of their own.

In the evening we were entertained at dinner by the President and Faculty of the University of Michigan Law School at Ann Arbor, Michigan, and at midnight we departed *en train* for Chicago, where we arrived in the early morning of the 21st Aug. last.

Our rooms had been reserved at the Stevens Hotel at Chicago. This hotel which is said to be the largest in the world and contains 3,000 rooms, was the headquarters of the American Bar Association, and we there found American attorneys from every part of the United States. Some of them had travelled some thousands of miles to do us honour by attending the convention, and one met there every kind of American lawyer. The festivities here were greater than ever, and the speeches on most evening occasions lasted well into the early hours of morning. On the first day we started at 10 a. m. with about twenty speeches and finished at the Chicago Civic Opera House with an official welcome from the Chief Justice of the United States, followed by a number of speeches from chiefly members of the delegation, many of which were excellent, but most of which were long. After the Official Welcome there was a reception at the Stevens Hotel, followed by a dance, and so to bed at an hour I will

not here mention. It was at the Northwestern University that a number of our leaders, including Mr. Justice Hanna of the Irish contingent, and who was a sergeant-at-law before his promotion to the Free State Bench, were installed as honorary members of the Order of the Coif and were presented with the golden key of knowledge. We saw a baseball match between famous opposing teams. We viewed the ascents of American and international air aces at the airport, and we saw most of the things worth seeing in Chicago. We dined with the American Bar Association and with numerous private hosts in and out of the city, and one of us, the only one who chose this form of enjoyment, was taken on Friday night after the Bar Association dinner, to Springfield, Illinois, where he was shown the Lincoln country and had an extremely interesting time. On Sunday, the 24th Aug., we attended various churches and in the afternoon were entertained by one of our hosts at his delightful home situated in the country some twenty miles or more from the city. From there we were taken to the famous Ravinia Park, where an equally famous company of operatic stars delighted our ears and eyes with their exquisite rendering of Verdi's opera "Bal Masqué."

At all the public banquets attended by us there was iced water, water everywhere and nothing else to drink. Nevertheless, I have been told that certain members of the delegation at many private houses, speak-easies and other places had every opportunity afforded them of quenching their thirst in cocktails, whisky, brandy, and even champagne, and this of the very best. Whether their consciences permitted them to break the law of a great country in which they were merely visitors, I hesitate and in fact refuse to say. That there is no great difficulty in obtaining intoxicating liquors by those persons who desire to obtain them, providing they have friends or money, is beyond doubt, and that there is a strong feeling against prohibition in many states (rightly or wrongly, I do not pretend to say) is equally beyond doubt.

It was at Chicago, so the story goes, that a distinguished-looking member of the delegation was invited to dinner by someone he met in the hotel and was given an extremely good dinner and some excellent champagne by his host, who somewhat disconcerted our friend by addressing him as "Sir John," and when he asked his host, "why do you call me Sir John?" his host said, "But aren't you Sir John Simon?"

Chicago has a wonderful frontage on Lake Michigan, and many of us were sorry that our visit was so short, but on the 25th Aug. we had to leave for Washington. The journey was a long one lasting from Monday at 1 p. m. until Tuesday at 8:34 a. m., when we arrived at the capital city .

Washington pleased us all. We much admired the Capitol and the many other beautiful edifices in that city. In addition to the luncheons and dinners given in our honour (including a dinner given by a distinguished lawyer who not so very long ago received a fee of a million dollars, which even in America is an enormous fee), we were received by Mr. Hoover, the President of the United States, and Mrs. Hoover, at the White House, and every possible kindness was shown to us by them and by all those with whom we came in contact. We stayed at the magnificent Mayflower Hotel and were given the privilege of temporary membership of all the most select clubs in or near the city and were invited to the homes of influential members of the Government and others. We attended a reception at the British Embassy where we were once again on British soil, with the advantages, from the American point of view, attached thereto. We were received also at the French Embassy with similar advantages and we were taken up in aeroplanes to view the city. We visited the beautiful National War Cemetery at Arlington, Virginia, and saw the artistic war memorials, and there our leaders deposited a wreath brought for that purpose from England. Some of us visited the church in which George Washington worshipped at Alexandria, Virginia, and we also went for a trip on a navy boat on the Potomac River to Mount Vernon, the home of George Washington, where we were received as the guests of the nation. Our time at Washington came to an end far too quickly, and although tired out by the strenuous life we had led in fulfilling the engagements made for us by our hosts, we were all enamoured of the place and wished we could have stayed longer and devoted more time to the inspection and appreciation of its many treasures, all of which were thrown open to us. Our schedule, or "skedule" as our hosts pronounced the word, would not permit of it, however, so on Friday, the 29th Aug. we commenced the next stage of our journey.

We left Washington for Annapolis, the capital of Maryland, on the said Friday morning, and on arriving there we were welcomed by Governor Ritchie, a past president of the Maryland State Bar Association, who was very outspoken in his views on the subject of Prohibition. Annapolis is distinguished for its preservation of an exceptional number of the buildings and marks of an English colony in America of the eighteenth century. We were shown through the United States Naval Academy, where about 2000 midshipmen train for a period of four years under Rear-Admiral Robison, and afterwards we embarked on the steamer *Latrobe* for Baltimore, sailing down the Chesapeake and across Chesapeake Bay, passing en route various places of historical interest as the scene of engagements between American and British troops in 1814, and Fort Henry, the successful resistance of which brought the song "The Star Spangled Banner" from Francis Scott Key, a young lawyer. We arrived at Baltimore late in the afternoon and were entertained at dinner in the evening by Mr. Wilbur Miller, the president of the Davison Chemical Company, at Worthington Valley some thirty miles or so from Baltimore. It was at Baltimore that one of the delegates, proceeding with another delegate in a car to Worthington Valley, and escorted in state by the usual traffic cops, expressed the wish that the manager of his bank could see him as his then regal appearance would greatly facilitate an overdraft which he might badly need on his return home. Next morning, as the song says, we were "off to Philadelphia," and arrived at that city after a journey of about two hours in motor cars. After the usual reception we spent some hours in a sightseeing trip in and around the ancient city, including a view of the very interesting Hampton L. Carson collection of Blackstoniana and a visit to the famous Wanamaker store, where we were entertained to lunch, and immediately left for another lunch given by the Law Association of Philadelphia at the Country Club. In the evening we left for New York and eventually arrived in that famous city which was our headquarters for five days.

New York met us with an enormous budget of invitations to banquets and festivities, a special badge to wear in the city and a medal specially struck in our honour and presented by the Hon. James J. Walker, the mayor, who was kind enough to be present at the railway station to greet us on our arrival. We spent

Sunday in visiting the Cathedral of St. John the Divine and churches of other denominations, and on Monday, the 1st Sept., we went by boat through New York Harbour and up the Hudson river to West Point, the Sandhurst of the United States, where we visited the magnificent chapel, and afterwards the cadets in their archaic uniforms were specially drilled for our inspection. We returned via the famous Storm King Highway and then by boat down the Hudson back to New York and the Plaza Hotel. We viewed the famous Broadway and Fifth Avenue. Some of us visited theatres and picture palaces. Others visited Chinatown, Harlem (the coloured quarter), and Coney Island. Nearly all of us attended the reception given by Mr. Clarence H. Mackay at his beautiful treasure house at Roslyn, Long Island, and also the luncheon given to us by one of our hosts on the fifty-fifth floor of the Manhattan Company building in Wall street. More degrees were conferred upon our leaders, including Sir Frederick Pollock, at the Columbia University, and the reception at the City Hall by the Mayor of New York will ever be remembered. Then the time came to leave for Boston, where, after a series of entertainments and visits, our pilgrimage ended, and those of us who had not already left or decided to stay behind, sailed for home on the steamship *Scythia*.

DEPARTMENT OF CURRENT LEGISLATION

State Adoption and Enforcement of Federal Air Navigation Law

BY FREDERIC P. LEE
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THE great amount of State licensing legislation in the field of air navigation is an aftermath of the compromise reached by the Senate and House of Representatives as to the scope of the regulatory provisions of the Air Commerce Act of 1926. The bill as passed by the Senate, restricted compulsory registration of aircraft (and in consequence compulsory rating or licensing of aircraft and airmen) to aircraft engaged in interstate or foreign commerce, whether or not such commerce was carried on in the navigable air space. Similarly the air traffic rules applied only to the navigation of aircraft in interstate or foreign commerce.

The House amendment to the Senate bill provided that the registration and licensing requirements and the air traffic rules should apply to all air navigation carried on in the navigable air space, whether in foreign, interstate, or intrastate commerce and whether commercial or non-commercial in character.

The Air Commerce Act Compromise

Under the compromise embodied in the Air Commerce Act of 1926, the Federal air traffic rules apply whether the particular aircraft is engaged in commercial or non-commercial or in foreign, interstate, or intrastate air navigation in the United States, and whether or not the particular aircraft is registered as an aircraft of the United States or is navigating in a civil airway established by the Federal Government. This comprehensive scope of the air traffic rules, the conferees on the part of the House declared to be necessary in order to protect and prevent undue burdens upon interstate and foreign air commerce.

On the other hand the registration (and in consequence the rating and licensing of aircraft and airmen) is made compulsory by the Air Commerce Act of 1926 in the following classes of commercial air navigation only:

(1) *The transportation in interstate or foreign commerce of persons or property for hire, either in whole or in part by aircraft whether or not the air portion of the transportation is interstate or foreign or is intrastate.* The transportation of property for hire includes the transportation of the mails by aircraft.

(2) *The interstate and foreign navigation of aircraft in furtherance of a business.* This would cover, for instance, the transportation of factory products from the main plant to a branch office, or the use of aircraft by salesmen or insurance agents or professional men while traveling upon business. The clause, of course, would not cover the use of aircraft for the purpose of transportation from home to office.

(3) *The interstate or foreign navigation of aircraft from one place to another for operation in the conduct of a business.* The clause would cover the public exhibitor if he navigates his aircraft from a place of exhibition in one state to a second place of exhibition in another state, or an aviator flying from a place in one state where he conducts intrastate transportation for hire to a place in another state where he again conducts intrastate transportation for hire.

Thus the licensing requirements apply to practically all interstate and foreign commercial air navigation but do not apply to non-commercial air navigation, whether intrastate, interstate, or foreign, nor to intrastate air navigation, whether commercial or non-commercial.

The regulatory provisions of the Air Commerce Act of 1926 must be recognized as a compromise forced by a House holding to the belief that air navigation for its success requires uniformity of regulation throughout the nation; and by a Senate desiring to preserve full freedom of state action over intrastate and non-commercial air navigation. The House successfully maintained its position in the most vital matter of air traffic rules. It receded from its position in great part as to the compulsory licensing requirements for aircraft and airmen.

The Assistant Secretary for Aeronautics of the Department of Commerce, Clarence M. Young, in his

recent statement before the National Legislative Air Conference at Chicago, stated that:

> Chronologically speaking, the United States is a very small territory; in fact according to some recent flights, it is approximately twelve hours east and west and some nine hours north and south. And when nations are measured in hours and states are measured in minutes, it is necessary that the force which regulates and controls should be uniform in all its phases and basically provided by an authority empowered to speak for the nation.

The Department of Commerce is insistent that safety makes necessary this uniformity, not only in the air traffic rules, but also in the licensing requirements for aircraft and airmen. Once the aircraft is in the air there can be no distinction between its interstate or intrastate character. In each instance the Department urges that the craft must be equally airworthy and the pilots equally competent in order that interstate and foreign air navigation may be adequately protected.

Congress having spoken in the Air Commerce Act of 1926 with the finality that results from the compromise of a dispute settled only through arduous conferences, no attempt was made to obtain uniformity through broadening the scope of the regulatory provisions of the Federal Act. On the contrary, uniformity is being brought about by State legislation, but the legislative methods used in reaching this uniformity have been, as to their details, of a widely divergent character.

The Option and No-option Plans

Two general types of State statutes have been evolved and advocated. On behalf of the Department of Commerce, the then Assistant Secretary of Commerce for Aeronautics, William P. MacCracken, Jr., proposed in 1928 the "no-option plan."[1] Under this plan the States require aircraft subject to their jurisdiction to be licensed and registered by the Department of Commerce in the manner prescribed by the lawful Federal rules and regulations then in force. The plan, in addition, provides that all airmen engaged in navigating such aircraft should have Federal licenses of the appropriate class.

The other type of State statute proposed is the "optional plan." This was evolved and is advocated by the American Bar Association Committee on Aeronautical Law.[2] Under this plan a State requires, for all civil aircraft flown within the State, either a State license or a license under the Federal law. A similar alternative is afforded persons acting as airmen of such aircraft. The committee in 1928 stated that the no-option plan would not be satisfactory for there "was a disinclination that would undoubtedly arise in many states to relinquish all control over intrastate aviation into the hands of the Federal government." The optional plan, while first proposed by the American Bar Association committee in 1928, was not finally approved by the Association until the present year. Under the committee's draft it is further provided that the issuance of the alternative State licenses shall be:

> in accordance with regulations promulgated by him (the Vehicle Commissioner) which regulations shall conform to and coincide with, so far as practicable, the provisions of the Air Commerce Act of 1926, and amendments thereto, passed by the Congress of the United States, and Air Commerce Regulations issued from time to time pursuant thereto.

Both the optional and no-optional plans depend upon an enabling provision of the Federal law. The Congress apparently foresaw the possibility of State dependence upon Federal administrative activity. The Air Commerce Act of 1926, while confining the compulsory licensing requirements to interstate and foreign commercial air navigation, in addition contains an enabling provision whereby aircraft engaged in other types of air navigation might be registered under Federal law, and in consequence such aircraft, and airmen serving in connection therewith, are enabled to obtain Federal licenses.

Frequently the actual differences between the optional and no-option plans are slight. While under the optional plan a State license is an acceptable substitute for a Federal license, nevertheless in those States adopting the American Bar Association draft of the optional plan, the regulations governing the issuance of the State licenses are required to conform "so far as practicable" to the Federal regulations. As a consequence, while the issuance of Federal licenses is based upon regulations promulgated by a Federal authority, and the issuance of State licenses is based upon regulations promulgated by a State authority, in most instances the State regulations are identical with the Federal regulations. Thus under both plans, in effect the Secretary of Commerce prescribes the standards or regulations governing the airworthiness of aircraft and the competency of airmen, whether the aircraft is navigated in interstate or foreign commercial air navigation regulated by Act of Congress, or in non-commercial or intrastate air navigation regulated by State law.

The essential difference between the optional and no-option plans is one of administration. Under the no-option plan the Federal administrative authority in every case determines whether or not the applicant is entitled to a license; under the optional plan the State administrative authority determines whether or not the applicant has complied with the State-adopted Federal regulations in case the applicant applies for the alternative State license. Such differences in administration as exist must lie in the varying interpretations given to the Federal regulations by the Federal and State administrative authorities and in the relative efficiency of each authority in applying and enforcing those standards.

Classification of State Laws

Turning now to the State laws as enacted and not merely as proposed, it will be found that twenty-nine states require federal licenses only, for aircraft and airmen engaged in air navigation within the State.[3] The optional plan is in force in six States,[4] and six States require State licenses solely and do not permit the

1. Aeronautics Bulletin No. 18, Aeronautics Branch, U. S. Department of Commerce.

2. 53 Repts. American Bar Association, 317; 54 Repts. American Bar Association 287; Report of the Committee on Aeronautical Law to the American Bar Association for 1930.

3. Arizona, Laws of 1929, Chap. 38; California, Laws of 1929, Chap. 850; Colorado, Laws of 1927, Chap. 64, and regulation of the Colorado Commission of Aeronautics pursuant thereto; Delaware, Laws of 1929, Chap. 249; Idaho, Laws of 1929, Chap. 137; Illinois, Laws of 1928 (Second Special Session), p. 85; amended laws of 1929, p. 173; Indiana Laws of 1929, p. 171; Iowa, Laws of 1929, Chap. 135; Kentucky, Laws of 1930, Chap. 11; Mississippi, Laws of 1928, H. B. 883; Missouri, Laws of 1929, p. 134; Montana, Laws of 1929, Chap. 17; Nebraska, Laws of 1929, Chap. 34; Nevada, Order of the Public Service Commission of Feb. 5, 1929; New Jersey, Laws of 1928, Chap. 63; New Mexico, Laws of 1929, Chap. 71; New York, Laws of 1928, Chap. 233; North Carolina, Laws of 1929, Chap. 190; North Dakota, Laws of 1929, Chap. 85, and resolution of the Board of Railway Commissioners; Ohio, Laws of 1929, p. 28; Rhode Island, Laws of 1929, Chap. 1435; South Carolina, Laws of 1930, No. 625; South Dakota, Laws of 1929, Chap. 70; Texas, Laws of 1929, Chap. 285; Vermont, Laws of 1929, Act. No. 79; Washington, Laws of 1929, Chap. 157; West Virginia, Laws of 1929, Chap. 61; Wisconsin, Laws of 1929, Chap. 348; Wyoming, Laws of 1927, Chap. 72.

4. Maine, Laws of 1929, Chap. 265; Maryland, Laws of 1929, Chap. 318; Minnesota, Laws of 1929, Chap. 290; New Hampshire, Laws of 1929, Chap. 132; Oregon, Laws of 1929, Chap. 352; Virginia, Laws of 1928, Title 33-A, Chap. 146-A.

acceptance of a Federal license in lieu of the State license.[5]

No licenses whatever are required in Alabama, Georgia, Louisiana, Oklahoma, Tennessee, and Utah.

The Michigan law[6] presents a situation different from any of those above set forth. The statute does not provide for a Federal license even as an option, but only for a license issued by State authority. Nevertheless, the desired end of uniformity is obtained as a result of the requirement imposed upon the State Board of Aeronautics whereby it "shall adopt and place in force the Federal rules and regulations issued by the Department of Commerce having to do with the licensing of aircraft and airmen and the regulations thereof." The result achieved by the Michigan law is not dissimilar to that obtained under the State laws providing for an optional State license, but under most of these laws the State licensing authority is required to conform to the Federal regulations only "so far as practicable." The difference would seem to be that the Michigan licensing authority is not given this discretion granted by the optional law.

In its administration the North Dakota law also furthers uniformity through a rather peculiar means. The statute itself is of the ordinary optional form as recommended by the American Bar Association. However, the Board of Railway Commissioners of the State, which is the administrative authority in charge of the enforcement of the Act, has by regulation made mandatory the requirement of a Federal license for aircraft and airmen. A similar result was reached by regulations by the Colorado Commission of Aeronautics in its administration of the Colorado law. The statute, however, was not optional in character, but merely made it the duty of the Commission to provide for the registration and grading of aircraft operating within the State.

A number of the States, while providing for a Federal license, limit the requirement to aircraft and airmen engaged in commercial navigation. Neither a Federal or State license is required for non-commercial intrastate navigation within the State. Missouri so limits its Act, while Colorado and Nevada achieve the same result through regulations of the licensing authorities. A considerable number of States, however, achieved the result in consequence of a provision that requires a Federal license only if the form of air navigation in which the aircraft is engaged is such that the Federal Government would require a license if the air navigation were interstate. Under the Air Commerce Act of 1926, the Congress did not require licenses for aircraft and airmen engaged in interstate non-commercial air navigation, but only for aircraft and airmen engaged in interstate or foreign commercial navigation. As a result, the laws of such States as Illinois (aircraft only), Nebraska, New York, New Jersey, Ohio, North Carolina, and West Virginia leave unlicensed, aircraft and airmen engaged in intrastate non-commercial air navigation.

The laws of several states as, for instance, Iowa, Idaho, Missouri, Nebraska, and Rhode Island, are apparently so broad in their prohibitions against flight within a State without a Federal license that they would apply to interstate commercial air navigation occurring within the State, as well as to intrastate air navigation. Violations of such laws are, of course, penalized, and apparently on their face such laws would have the effect of making it a State crime to fail to have a Federal license for interstate commercial air navigation, thus presenting a possibility of prosecution under both State and Federal laws. Other States, while having equally broad prohibitive provisions, attempt to prevent the above result by additional restrictive provisions. Kentucky, North Carolina, Illinois, Indiana, and South Carolina specifically declare that the acts or omissions made unlawful by the State law shall not be deemed to include any act or omission which violates the laws or lawful regulations of the United States. With similar effect, New Hampshire, Minnesota, Maryland, and Maine declare that the provisions of a State law shall not apply to civil aircraft or airmen while engaged exclusively in commercial flying constituting an act of interstate or foreign commerce. Ohio provides that "acts or omissions made unlawful by this Act shall not be deemed to include any act or omission which violates laws or lawful regulations of the United States; but it shall not be necessary to allege or prove, as a part of the case for the State, that the defendant is not amenable, on account of the alleged violation, to prosecution under the laws of the United States. That he is amenable to such prosecution shall be a matter of defense, unless it affirmatively appear from the evidence adduced by the State." Delaware, Kentucky, New York, South Dakota, and Texas have similar provisions.

Constitutional Problems

The interrelation of State and Federal air navigation licensing laws presents several constitutional questions of considerable practical importance and interest.

As heretofore pointed out, the Air Commerce Act of 1926 makes mandatory the licensing of aircraft and airmen only in the case of interstate or foreign commercial air navigation. The enabling provisions of the Federal Act, however, make it possible for the owner of an aircraft in his discretion to obtain Federal registration of an aircraft engaged in interstate non-commercial navigation or in intrastate navigation, whether commercial or non-commercial. In the event that an aircraft is so registered, it is mandatory that it be licensed as to its airworthiness and that its airmen have licenses certifying as to their competency.

Whatever constitutional question might be raised as to the validity of Federal regulatory requirements applying to non-commercial navigation or to intrastate navigation, would seem to be avoided in the case of the Federal Act by reason of the fact that the provisions in question are not regulatory but merely permissive in character. The constitutional validity of some of the State laws, above discussed, however, can not be so readily supported.

A considerable number of the State laws make it a State offense not to have a Federal license for interstate non-commercial navigation within the State. Such laws make mandatory a Federal license for a form of navigation for which Congress made such licenses merely permissive. Interstate non-commercial air navigation is within the regulatory power of Congress, even though in enacting the Air Commerce Act of 1926 Congress chose not to exercise this phase of its power.[7] The question arises, do State laws that make

5. Arkansas, Laws of 1927, Act No. 17; Connecticut, Laws of 1929, Chap. 253; Florida, Laws of 1925, Chap. 11339; Kansas, Laws of 1921, Chap. 264; Massachusetts, Laws of 1928, Chap. 388; Pennsylvania, Laws of 1929, Act. No. 316.

6. Public Acts of 1929, No. 148.

7. For the power of Congress to regulate non-commercial navigation under the commerce clause, see Oyster Police Steamers, 31 Fed. 763; 33 Op. Atty. Gen. 500. See also as to other non-commercial matters, United States v. Hill, 248 U. S. 420; Caminetti v. United States, 242 U. S. 470.

a Federal license for such navigation mandatory, conflict with the Act of Congress which merely makes such licenses permissive, and are such State laws thereby invalid as constituting an "undue burden" upon interstate commerce in the constitutional sense?[8] Or, on the other hand, are such State laws to be regarded merely as supplementary, tending to make uniform regulatory control in accordance with the principles prescribed by the Congress, and therefore do not in any real sense constitute an "undue burden" upon interstate navigation by air, but in fact relieve it from the burdens and dangers of unregulated interstate non-commercial navigation by air.[9]

Furthermore, it will be recalled that a few of the States make it a State offense to engage in interstate commercial, as well as non-commercial, navigation without a Federal license. The Federal Act fully regulates this type of navigation. Such State laws have the effect of making unlicensed interstate commercial flight a State crime, as well as a Federal crime. The same activity or failure may, of course, constitute different crimes against two sovereignties without being a violation of the double jeopardy provision of the Constitution.[10] The question remains, however, whether it is within the power of a State to make it a State crime to violate a Federal statute regulating interstate commerce, and whether a State statute achieving such a result would not constitute an undue burden upon interstate commerce?

On this last point consideration should be given to the fact that as passed by the House of Representatives, the Air Commerce Act of 1926 included the following subdivision which was omitted from the measure as finally enacted:

> (d) The Government of the United States hereby consents that the several States, and the Territories and possessions of the United States (and any political subdivision thereof in pursuance of the law of the State, Territory, or possession), may by law (1) provide for the prosecution of offenses that are punishable by the Federal Government under this section and that occur within their respective territorial jurisdictions or in the air-space above such territory, and (2) prescribe penalties or forfeitures, civil or criminal, to be imposed for such offenses. The trial and acquittal, or the conviction, of any person under any such law for any such offense shall constitute a bar to the trial and conviction of such person by the Federal Government for such offense. Prosecution under this subdivision shall be in accordance with such practice and rules of evidence, pleadings, and forms and modes of proceedings as the State, Territory, or possession may prescribe.[11]

Assuming that a State could, with the consent of the Congress, legislate in the field of interstate commerce and provide for State prosecution of violations of the Federal law occurring within the geographical limits of the State; nevertheless, in the absence of such Congressional consent the constitutional power of the state would seem doubtful.[13] This doubt is emphasized when it is noted that the State laws here considered do not merely provide for the prosecution of Federal offenses by State administrative authorities, but make the prohibited acts State as well as Federal offenses.[14] Again, it seems reasonable to conclude that the failure of the Congress to enact the House provision above quoted, indicates that the Congress intended Federal enforcement only and that the State laws in question would constitute undue burdens upon interstate commerce.[15]

Finally, the question has frequently arisen as to whether it is an unconstitutional delegation by a State of its legislative power, to make the requirements of a State statute depend upon the present or future requirements of Federal legislation or administrative regulations thereunder.[16] The question has arisen, for instance, in connection with the State prohibition legislation, particularly under State legislation which provides for the adoption of future Federal requirements. A similar question is presented by the State air navigation licensing Acts, and at least one State has on the face of its statute expressed doubt as to its constitutional power to require a Federal license for intrastate air navigation. In order to care for the contingency of unconstitutionality, California has provided that if its "no-option" requirement of a Federal license is held unconstitutional, then certain alternate provisions embodying an optional plan shall go into force.

8. For recent cases holding State interstate commerce legislation invalid where Federal legislation or administrative action has occupied a part of the interstate field, see Napier v. Atlantic Coast Line, 272 U. S. 605; Oregon-Washington Co. v. Washington, 270 U. S. 87; Mo. Pac. Ry. Co. v. Porter 273 U. S. 341.

9. However, in Southern Ry. Co. v. Ry. Comm. of Ind., 236 U. S. 240, the Supreme Court said: "The test, however, is not whether State legislation is in conflict with Federal law or supplements it, but whether the State has any jurisdiction of a subject over which Congress has exerted its exclusive control."

10. United States v. Lanza, 260 U. S. 377, and cases cited.

11. The subcommittee print of the report of the House Committee on Interstate and Foreign Commerce comments upon this subdivision as follows:

> The subdivision provides that the States as well as the United States may prosecute the offenses prescribed by the Act or regulations thereunder, and may also prescribe penalties or forfeitures, civil or criminal, to be imposed for such offenses in lieu of the Federal penalties under subdivision (a). The States have a concurrent power to regulate interstate and foreign commerce when their regulations do not unduly burden or interfere with interstate commerce, and when the matter is not one requiring nation-wide uniformity of regulation and enforcement. The effect of the section is that of a declaration that the Congress finds it is not an undue burden or interference with interstate commerce for the States to provide for the prosecution of and for the penalties for the Federal offenses. Such an undue burden or interference would, however, arise if the State prescribed not the penalty or method of prosecution but created new or different offenses as to the precise matters covered by the act or regulations. This subdivision does not in any way deprive the States of their concurrent power to prescribe offenses as to any matter not covered by the act or regulations.

13. But compare Gilbert v. Minnesota, 254 U. S. 325.

14. See Houston vs. Moore, 5 Wheat. 1.

15. The Judicial Code, section 256, paragraph First, vests the Federal courts with exclusive power to punish any Federal offenses and the courts have held in consequence that a State may not punish the *same* act, even though it be viewed as an offense against the State: In re Eno, 54 Fed. 669; In re Loney, 134 U. S. 372; Exparte Houghton, 8 Fed. 897 and 7 Fed. 657; Exparte Roach, 166 Fed. 344. There remains the question, however, whether the Federal Act in providing for a civil penalty only, created an "offense" within the meaning of the Judicial Code provision.

16. See cases cited in Flagg, Incorporating Federal Law into State Legislation, 1 Journal of Air Law 199-204; and Uniformity of Regulatory Laws through Federal Models, Journal of the American Bar Association, Vol. IX, p. 382.

Lord Birkenhead's Death

NEWS of the death on Sept. 30 of the Earl of Birkenhead was received in this country with deep regret by members of the American Bar Association who recalled his visit and address to the Association in Minneapolis in 1923 and also his splendid hospitality as one of the hosts when the Association paid its memorable visit to London in 1924. On the former occasion he was made an honorary member of the American Bar Association. His remarkable and meteoric career is well known and it is not necessary to recall it here. During the last years of his life he was engaged in large financial undertakings. There was something astonishing in his vigor and energy and in the zest for life which he displayed. Although death came prematurely and when further demonstration in a new field of his remarkable powers was confidently expected, few men of his day have lived life to the full as he did or have more impressed their contemporaries with their great capacity.

A CASE OF DISPUTED IDENTITIES

Interesting Complexities of Struggle for Large Estate of Man Who Died in Chicago in 1894—Under Ministrations of Association Engaged in Finding Heirs for Estates, Woman Became Imbued with Sensations of Heirship and Claimed Property—Identity of Main Witness Also in Dispute—Weird Circumstance Involved in Case of Latter

By Horace Kent Tenney
Member of the Chicago Bar

THERE is probably nothing which each of us, if his attention were directed to the question, would regard as so essentially his own private and personal matter as his individual identity. For it involves and has interwoven with it, not merely those things which we all possess in common, like race, name, age, residence and occupation, which may serve for a general description of one or of many men, but those peculiarities of person, habit, thought and experience which, like the finger print, mark each man's individuality and separate him from all his fellows. Every man as he goes through life, accumulates more and more of these identifying marks, fastening them upon himself and himself upon them, past all power of separation, or of duplication. The common differences of form and feature by which we recognize our friends and are recognized by them are often quite insufficient for the purpose of accurate description, or positive identification. They often vary in the same person under the different circumstances created by change in age, dress, time or place: many men bear striking resemblances to each other in personal appearance while differing absolutely in every other characteristic. Some men have great difficulty in remembering names, others cannot remember faces; others, while accurate in their identification when confronting the individual, cannot in his absence give a correct description by which another would be able to pick him out. Probably if half a dozen of the most intimate friends of any one of us were to venture on a personal description, they would differ sharply about our height, weight, and the color of our hair and eyes. Thus tricks of memory and differences in the accuracy of observation often produce doubts as to the identity of persons, and honest witnesses face each other in court asserting and denying the presence of one of the parties at some particular time and place.

But every man, aside from what we may in strictness call his personality, by every act of his daily life, no matter how trivial, individualizes himself from all his race. Nothing which he does has its exact replica in the act of any one else. And the sum of all these acts weaves about him a complicated web of individuality from which he can never separate himself, and which no other man can acquire, if either seeks to change places with the other and adopt his personality. No matter how carefully one may study the manner, characteristics and history of the other, if he tries to impersonate him, he will soon find that some trivial distinction, some ignorance of a fact known to the other, or familiarity with something of which the other was ignorant, will betray him. And at every turn he is met with another difficulty: for it is not enough for him to imitate; he must also rid himself of the individuality and identity which his own life has created for him, a task almost as great as losing one's shadow.

In the case of which I write, a woman presented herself as heir to an estate, claiming to be a daughter who had in fact been dead for many years, and whose sons had succeeded to her rights. In substantiating this claim she had to separate herself from the individuality which her past had created for her, and fit her life and experiences into what she believed would have been the life and experiences of the real heir.

In order to begin the story which became part of this litigation, it is necessary to go back across the water and speak of some very simple happenings of some very simple country folk about ninety years ago. The man whose estate involved all this pleasing complexity was Thomas Dolan, who lived in Chicago for about forty years preceding his death in 1894. He was born in Kircubbin, County Down, Ireland, about 1808. In 1836, while he was working as a railway contractor at Carlisle, England, he met Margaret Armstrong, and they together took the lover's route over the Scottish border and were married at Gretna Green. At that time the English law invalidated all marriages not celebrated in the Church of England, but recognized as valid a marriage contracted in Scotland according to the simple formula which sufficed in the latter country. The marriage of the young couple at Gretna Green was therefore valid upon their return to Carlisle, but Margaret's mother desired a more formal ceremony, and accordingly they were remarried in the Presbyterian Church in Carlisle. The second child of this marriage, and the one about whom the interest of this story centers, was Jane, who was born on July 9, 1838. The time of her birth, and her age in the Forties, are of importance in connection with the controversy which subsequently arose.

In the fall of 1839 Dolan came to America, leaving his wife, with their three children, at the home of his mother, in Glastry, Ireland. A short time afterwards he sent for them to join him, and Mrs. Dolan started from Glastry with the two little boys to take the ship at Liverpool. There were several others in the party, which included a brother of Dolan and a sister of Mrs. Dolan, the latter going to Liverpool in advance of the others, apparently with the understanding that they were to bring Jane to the ship. When they arrived Jane

was not with them, and the explanation was made that she had burned her foot, and her grandmother was therefore unwilling to let her go. Whatever the reason was, the fact remained that Mrs. Dolan sailed, leaving Jane in Ireland, and never saw her again.

Jane's subsequent career involved very little beyond "The short and simple annals of the poor," and certainly gave no hint of the romantic controversy which subsequently arose over the question of her identity. She lived in Ireland with her grandmother for a time, and in August, 1858, married a man who bore the sonorous name of Cahoon Donovan. They came to Philadelphia in 1859, where she died in 1870, leaving two sons. These facts, and her identity as the daughter of Thomas Dolan, who was left in Ireland when the family came to America in 1939, were established by the testimony of neighbors who had lived with them in Ireland, came with them to Philadelphia, and lived with them there, and by pictures which she had sent back to Ireland after coming to this country. Her marriage to Donovan, the birth of her children, were all shown by record evidence, excluding the possibility of doubt.

Confirmation of the fact that the Donovan's were at least of Irish ancestry—aside from the suggestive name—was furnished by a remark in a letter which one of them wrote. A great deal of difficulty had been experienced in finding him and when at last he was located in Nebraska and was informed of his interest in the estate, he wrote to one of the attorneys, saying, "I understand you had great trouble in finding me. If you had wrote me, I would have told you where I was."

As I have stated, Mrs. Dolan followed her husband to America in 1840, leaving Jane behind. Dolan worked on the Erie Railroad, which was then being built, moving from place to place in Michigan and New York He became a canal boatman, and ran his boats on the Erie Canal. In 1848 he deserted his wife, and ran away with a woman named Douglas, going with her, and the children whom he took with them, to the Chesapeake & Ohio Canal. After this woman's death he married another woman, but immediately deserted her, and disappearing from the country was supposed to have been drowned. He, however, came to Chicago about 1854 and lived there until his death in 1894. His deserted children were brought up by some people living in Alexandria, through whom they were found and identified after his death. The daughter of one of his daughters had in her possession the leaf from the family bible, containing the record in Mrs. Dolan's handwriting of the birth of the children, Jane among them, thus conclusively establishing both the date of Jane's birth, and the identity of the grandchildren in whose possession the leaf was found.

Dolan at the time of his death was a man of large means, a director in one of the leading banks, and had been prominent in politics. Consequently the litigation which ensued over the conflicting claims of heirs, and over the validity of his Gretna Green marriage attracted a good deal of attention, and the details of much of the evidence was published in the newspapers. Depositions taken in Ireland, England and New York showing the history of his early life, were on file and easily accessible to the public; and these showed among other things, the fact that an infant daughter Jane had been left in Ireland. And this fact seems to have suggested, as a lucrative possibility, the plan of "finding" this daughter and producing her as an heir.

At that time there was an association in Chicago—not exactly eleemosynary in character—which was engaged in the laudable business of finding heirs for estates, or estates for heirs, as might be desired. Through the ministrations of this association, a lady named Anna Jones, became imbued with a sensation of heirship; and the spirit so worked upon her that at last she realized that she was Jane Dolan. Accordingly she appeared in the suit which was brought to settle the estate, and asserted that that long missing child had not married Cahoon Donovan, had not moved to Philadelphia, and had not died there, or elsewhere, but still lived in her person, with full power to hold property, and an earnest desire to acquire it.

Presenting herself in this way and with this claim, there were arrayed, upon opposite sides of this important question of fact, the two sons of Cahoon Donovan and Jane Dolan, who asserted that Jane, their mother, was dead and that they as her heirs were entitled to the estates and Mrs. Jones, who asserted that she was Jane, and therefore the heir herself. The preparation and presentation of her case therefore imposed upon her not only the burden of overcoming the proof of the Donovan heirship, and the theory as to Jane's life upon which it rested, but of disentangling her own personality from the web which all the incidents of her career had woven, and establishing that the actual Jane who was left in Ireland in 1840 was the person in whose life all those incidents occurred.

The real fact was that Anna Jones was the daughter of a man named John Forsyth, and was born in New York state in 1848, and was therefore about ten years younger than Jane Donovan. She had from earliest infancy been known as Forsyth's daughter; had lived with him as such and followed the wanderings of his career until her marriage. She had a younger sister named Helen, who was still living, and there were also in existence people who had been acquainted with the family, as well as record evidence of the birth of Forsyth's daughter Anna. Among those who were personally acquainted with Forsyth and his wife, before their marriage, knew all about the birth of their children, and had been in close contact with the family until after the children had grown up, was a man named James White, whose name and personality became an important feature of the case. Anna Jones' task was, therefore, to present a theory upon which the little girl Jane, who was left in Ireland in 1840 could become an infant member of the Forsyth family in New York in 1848 and thereafter live the life which Anna Jones had lived.

Forsyth resided in Watertown, New York, in 1848, when Anna Jones was born; and as this was not very far from the waterways upon which Thomas Dolan was operating in those early days, the fact perhaps suggested that this short gap might be bridged over and the possibility of an acquaintance between Dolan and the Forsyth family established.

Forsyth lived a somewhat roving life. He came West with his family, including Anna, in 1855; spent a few days in Chicago and went from

there to Wisconsin where he lived until he went to Missouri and Kansas after the war. Their old friend and neighbor, James White, came with him from New York to Chicago and Wisconsin, lent him the money to make the trip and Forsyth gave White a note for the loan. This note, tattered and worn with age, was produced upon the trial, and thus served to establish beyond doubt the fact that the man who produced it was the man who had known Forsyth and his family in those days. White visited the Forsyth family at intervals of a year or so at the different places in which they lived, paid a good deal of attention to the little girls and was known to both of them during all their lives as an old and intimate friend of the family.

In connection with the preservation of the old note of Forsyth—which was so very important in establishing the identity of White, the latter told a rather weird circumstance. He said that about a year before the litigation began he was burning up a lot of old papers and was on the point of adding this note to the flames, when something said to him, almost as plainly as an audible voice, "Keep that." So he put it back in the old wallet—to be produced later in a lawsuit about a man of whom he had never heard.

It is to be remembered that while the uneventful life of the Forsyth family was thus flowing on, Thomas Dolan was living first on the Erie Canal until 1848, then on the Dismal Swamp Canal, until about 1854, and then in Chicago. There was apparently no place where his life and personality could enter that of the Forsyth family.

The theory upon which it was claimed that he and his daughter Jane had come into the life of the Forsyth family was highly romantic and had about as much basis as other romances. It was claimed that in some mysterious manner, Dolan had brought his daughter from Ireland in 1848, and being anxious to conceal the fact from his wife, took the little girl "one dark stormy night" to the Forsyth home and placed her in their charge, to be reared as their daughter; that Forsyth had had a daughter born about that time who had lived but a few months; that Jane was inserted in the family circle in place of the departed; and that this accounted for the fact that all the relatives and friends of the family, including the other children, thought Jane was really Forsyth's daughter. By what plausible suggestion Forsyth could have succeeded in palming off on an unsuspecting neighborhood a ten-year-old girl as a new borne babe, was never stated on the trial with that clearness which carries conviction to the heart of the listener. But that is, perhaps, merely one of those difficulties in litigation which the ingenuity of the bar is supposed to overcome.

It was also claimed that Dolan, having thus filed his ten-year-old daughter in the bosom of the Forsyth family, visited her during the rest of his life; that he came west with the family; that he furnished Forsyth with money for her support, and that upon all his visits it was his custom to pay very marked and affectionate attention to Jane, giving her presents, and telling her that some time he would come to claim her and that she would be a great heiress.

But while it was claimed that Dolan did all these things which so clearly evidenced a relationship between him and the little girl, and afterwards the grown woman, Anna, it was also claimed that he did not do it under his own name; but that for the purpose of concealing his identity, he adopted the name of James White. In other words, that the actual man James White, who was so closely connected with the Forsyth family for so many years and in so many places, was none other than Dolan himself. And thus, in order to sustain the theory, there was imposed upon this fortune hunter the necessity of making the lives and personalities of White and Dolan interchangeable during all these years, and showing that they were the same person.

The character and characteristics of the claimant are not only somewhat interesting when considered in connection with her claim and the theory upon which it was founded, but, when so considered, illuminated her case with a revealing light. Over some of the incidents of her early career it is perhaps well to allow the mists of time to draw their charitable veil. But enough remains to show that romantic tales, such as that which she presented, had been both the food and the product of her mental equipment. She had but very little real education, partly due to her family's wandering life, and partly to the lack of opportunities which resulted from poverty. And apparently her excursions into the realm of literature were confined to the melodramatic class of stories which in our boyhood days were classified under the general monetary description of "dime novels." Her mind had fed upon material of this kind until it was filled with a desire to find in the humdrum of every-day life repetitions of the romances of fiction. It developed an especial fondness for the ever moving story of the lost heir, the wronged and discarded child of affluence, cheated of its birthright and kept in obscure poverty by the deep and malignant villainy of designing conspirators. To a mind so constituted and so nurtured, the idea, and finally the plan of herself playing that pathetic role, found ready entrance. And so she sought with unflagging zeal to find a family—but a family with a fortune—to which she could give honor by adopting its pedigree as her own.

In 1891 she learned of the death of a man in New York, who had left a modest property, and in some way she acquired the idea that he would be an appropriate ancestor. She accordingly bombarded his family with letters in which she sought to impress upon them the theory that she was his daughter, giving elaborate reasons designed to show that she was not related to Forsyth although she had always passed as his daughter. Finding, through these efforts, that blood was so much thicker than water that the family did not look kindly upon the honor which she thus tendered them, she abandoned the effort and looked for other fields and fortunes. She had read of that recurrent romance of the Anneke Jans heirship, and of the claim that the descendants of that Dutch widow of old Manhattan could successfully claim the vast properties of Trinity Church, if they could trace their pedigree back to her. And so, two years later, she sought to engraft herself as a bud upon that family tree. In this effort she based her claim upon the fact that Forsyth was her father, and that by inheritable blood from him she was an heiress to that great estate. The idea of consistency in

her various genealogical schemes seems to have been the feature which was most conspicuous by its absence: for her letters in connection with these two efforts showed not only that she claimed that she was, and that she was not, the daughter of Forsyth, but that she put forward the same details to establish both claims. "To be or not to be" seemed to her a mere question of expediency. And so, when a few years later, the newspaper accounts of the litigation over the Dolan estate showed that a little daughter of the testator had been left in Ireland in the early Forties, it must have seemed to her that Providence had at last answered her earnest prayer for an ancestor and a patrimony. So she furbished up the old properties which had not been efficient in attaching her to the estates of the New York man or Anneke Jans, set the stage for a grand reunion of the Dolan family, and entered upon the scene proclaiming herself to be the woman who had then been dead for about thirty years. And to give the play a new and delicate touch she added to the old properties as the requisite strawberry mark of romantic literature, a scar on her leg which she claimed resulted from the burn which Jane Dolan had received on her foot in 1839—apparently with the idea that evidence of such importance was entitled to a higher place.

But here there appeared, without the prompter's call and with no entry of his name in the list of *dramatis personae*, another character. It will be remembered that the theory upon which this claimant was proceeding—and to which she and her mother, Mrs. Forsyth, swore with fond tenacity—was that the mysterious stranger who brought her as an infant to the Forsyth family, and visited her in such a romantic way for many years under the name of James White, was in fact Thomas Dolan. And as Dolan was dead, the logic of the story of course implied that James White was also dead; for no theory was suggested by which even a man who lived a double life could die under one name and survive under the other.

But by a rare chance, and to the confounding and destruction of this carefully built-up theory, one day there walked into the office of Dolan's executor, old James White himself. It was like the reappearance of the Puritan hero in Longfellow's poem, "Bodily there in his armour Miles Standish the Captain of Plymouth."

It would, of course, seem as if his mere physical existence, refuting as it did the entire theory of the Jones claim, would have been sufficient to end the contest. But there are litigants so confident that fate has reserved them for a glorious future—and fortune—that they cannot find in their bright lexicon any word which even suggests the thought of failure. And so the ingenuity of man, and of woman, set to work to meet the danger which the palpable fact of White's existence presented, and to devise a theory by which that fact could be shorn of its terrors. The theory which was devised and presented in court had at least that element of beauty which comes from extreme simplicity. For it consisted of the bald denial that James White was James White. But as the man was actually there in the court room, this involved the assertion by the claimant that, by some mysterious chain of marvelous coincidences this man had known the Forsyth family for years, had visited them at all the different points of their wanderings, had Forsyth's note payable to him by the name of James White nearly fifty years before, had pictures of the Forsyth girls in his possession, knew all the incidents of their early history, had lived a long and uneventful life in a small country town under the name of James White, and yet that he was not James White at all, but an aged imposter who was endeavoring to defeat the just claims of a much wronged heiress, when in honest fairness he ought to recognize himself as a dead man who had already fulfilled all the functions of life, and received the decent offices of Christian burial. And thus into the maze of this litigation was introduced another question of disputed indentity; whether James White was James White and therefore Thomas Dolan; whether the man who appeared in court and was sworn under the name of James White was the man whom he pretended to be; or whether the man whom he pretended to be had died when Thomas Dolan gave up the ghost. Thus, this quiet, retiring, soft-spoken old man, who, by a most happy chance, had just dropped into the executors' office to inquire why Anna Jones, whom he had known all her life, was writing to him about the estate of Thomas Dolan, of whom he had never heard, suddenly found himself called upon to establish his own identity; to show that he had lived the life of James White, and was continuing business at the old stand; that he had never lived the life of Thomas Dolan, and was not bound to share in its termination. He found himself the centre of a whirling maelstrom of contentions in which he had not the slightest interest, except from the fact that the only person whom he actually knew was trying to take from him all the incidents of his life which made up his personal identity, and to attach them to the life of a man whose body was in the ground, but whose will was still making trouble among mankind. He certainly must have regarded the situation with amazement; and if it sometimes made him wonder who he actually was, we could hardly be surprised.

The evidence of his identity was, of course, easy to procure from those who had been his lifelong friends and neighbors. But there were two other sources from which evidence was obtained which was not only conclusive, but almost dramatically significant in its character. One of these was the letters which Mrs. Jones had written. For that lady, before her theory had been fully developed, and before she ever even suspected the possibility of James White appearing as a witness, had written him several letters, seeking to avail herself of his knowledge of the history of the Forsyth family, and inquiring for details about the dates of her birth and those of the other children. The mere fact of her writing these letters to White was, of course,—to put it very mildly—not quite consistent with the theory subsequently presented on the trial that White and Dolan were one, and that therefore the death of Dolan implied the death of White also. And no really satisfactory explanation was ever offered to show why, if she thought White had died when Dolan did, she should have opened a correspondence with him through a mortal postoffice.

But in addition to this, she wrote a number of letters to her sister Helen, who lived in one of the far Western states. These letters were most

interesting, not only as evidence in connection with the oral testimony of herself and her mother, Mrs. Forsyth, but as illustrating the gradual development of the theory upon which her case was ultimately presented. They began by stating that she was not the daughter of Forsyth, and asking what Helen remembered of the family history; whether she had any pictures of James White, or letters from him, and what Helen remembered of his personal appearance. These letters were written before White had appeared as a witness in the Probate Court and before she had any reason to think that he would be discovered by those interested in the estate, and produced as a witness against her. But after he appeared and testified in her presence, she continued to write to her sister about the case, seeking her assistance in establishing her claim; and in these letters she referred to White's appearance in court and said that she recognized him at once. She also referred to the fact that he had produced an old picture of Helen. Just how it was possible for her immediately to recognize in the living personality of James White the man whom she had known from childhood by that name, but who she was now claiming was the dead man Dolan, or how, if he was a mere imposter, she could recognize him at all, or he could produce a picture which her sister had sent him years before, were some of those inconsistencies which large minds are supposed to regard as mere foolish bugbears.

The other source of evidence to establish the identity of James White, and his acquaintance with the Forsyth family was even more direct, and far more interesting because of the subsequent developments in connection with it. It was at once apparent that both Helen and her husband knew the James White who had thus been connected with the life of the Forsyth family quite as well as did Mrs. Jones; and that they were therefore well qualified to say whether the James White who had appeared in court was or was not the old family friend. And so, at the request of the executor, they came to Chicago for the purpose of meeting him. And then there was developed another strange phase of human nature, and another turn of this twisting case.

You will remember that Mrs. Jones' claim that some strange and special relation had been made manifest throughout all her life between her and James White, the mysterious friend of the Forsyth family, was based upon the assertion that he had always exhibited toward her an interest and affection so marked that it was practically parental in its character, and could not be accounted for upon any theory of a mere passing interest in the child of a friend. Indeed, in her shaping hands this interest grew and developed until it was made to appear that the sole reason for White's visits to his old friend was to see her. And with her tendency toward the romantic and mysterious the tale was soon adorned with all of the trappings which seemed to her appropriate to such a situation. White's pleasantries and kindly remarks soon grew into veiled suggestions of the greatness of her ancestry, and of the marvelous fortune which was to be hers when a noble father and a beautiful mother should emerge from the mists of obscurity and claim her for their own.

These manifestations of an interest and affection which were supposed to indicate that she was not really a child of Forsyth and his wife, but was the child of White, were put forward by Mrs. Jones, not only in her testimony, but also in the letters which she wrote to her sister Helen in an endeavor to induce her to assist in supporting the claim.

But here the power of suggestion, combining with the tendency of the human mind to see and to believe that which it would like to see and believe, produced a result which imagination could not foresee, and against which ingenuity could hardly provide. For the idea that there was a child of mystery in the Forsyth family also found ready and welcome entrance into Helen's mind; but she immediately remembered, and straightway contended, that she was the child upon whom James White had lavished the stores of a hitherto unaccountable affection, and that, therefore, if these manifestations had their origin in a paternal relation, it logically followed that she, and not Mrs. Jones, was the daughter of White, and because of his identity with Dolan, the heiress of the Dolan fortune. And so luxuriantly does the imagination grow by what it feeds upon, that when Helen came to Chicago with her husband, at the executor's request, to meet old James White and see if they could identify him as the man whom they had known for so many years, they came with a strong hope and an earnest desire to find and prove that he was not their old friend, but a mere imposter. It was therefore their plan, or at least their hope, that by disproving his contention as to his identity, and making use of Mrs. Jones' theory as to the real James White, to refute her claims by confronting her, and the court, with the true heiress.

Those who were present at the meeting between James White and Helen and her husband will not soon forget the dramatic tenseness of the situation. Though many years had elapsed since they had seen him, it was, of course, not humanly possible that they should not recognize him, at least after talking with him. But there was the danger that, having worked themselves up to a pitch of enthusiasm on the question of a mysterious heirship, they might refuse to admit his identity, even if they recognized it. Fortunately they were honest people who were willing to admit that which they knew to be the truth. They were seated in a room and White walked into their presence. Their faces instantly told the story, no matter what they might have said, and it was the story of shattered hopes of a fortune. They both stared at the man, whose mere existence disproved their theory of heirship, and then Helen's husband, a bluff westerner, walked across the room, held out his hand and said, "Well, by God, James White how are you?" And I can give personal assurance that there was a deep sigh of relief when he said it.

The rest of this story would merely relate to the trial of these questions of identity; for Mrs. Jones did not abandon her claim even when Helen and her husband testified against her.

That the trial itself and the argument of the questions of fact in it; the arrangement in argument of the many incidents of intimate family life—incidents trivial in themselves but marvelously significant on the question of fitting the personality of one person into the life of another—would be intensely interesting to one who was

engaged in it professionally must be apparent. But that it had in it those elements which could thrill even the Chancellor who held the scales, is shown by the fact that he, a judge of wide experience, said that it was the most fascinating case that ever came before him.

One of the interesting incidents of this trial, and of the questions of personal identity which it involved, was connected with a very remarkable family resemblance. When Thomas Donovan, the oldest son of Jane Dolan Donovan, came to Chicago, everyone who knew Dolan in his lifetime, upon seeing Tom Donovan, at once exclaimed upon his extraordinary likeness to Dolan. By their description, the likeness was not a mere casual one, such as would be noticed by a person affected by the power of suggestion and looking for a resemblance, but was so complete as to make him seem to those who knew Dolan in his younger days, almost a duplication of the latter's personality. This likeness, and the possible effect which it might have as evidence in the case, was submitted to two tests: Tom Donovan was taken to the office of the attorneys for the executor, and Dolan's old bookkeeper was invited there at the same time, without any knowledge on his part of Donovan's existence or that he was to meet anyone even supposed to be connected with the Dolan family. The old bookkeeper came into the room where Donovan was standing, looked at him for a few minutes, and finally turned to one of the attorneys, who had also known Dolan for many years, and said, "Well! It is old man Dolan, isn't it?"

The other test was through the Chancellor himself. He had for many years before he went on the bench, been Dolan's attorney, and a long and close personal acquaintance had existed between them, and this fact was known to all parties in the case before the trial began. It was felt that if Tom Donovan did in fact bear the extraordinary resemblance to Dolan which those familiar with the latter claimed to see, it would not escape the attention of the Chancellor; and that if he personally recognized this resemblance, the circumstance was entitled to and would be given weight as evidence in the case. Nothing, however, was said to the Chancellor upon the subject of this resemblance, as it was desired to let him come to him own conclusion about its existence from seeing the man in court, but without suggestion from anyone in argument that a significant resemblance existed. The result was that when the Chancellor announced his decision, he himself brought up this matter, and after saying that resemblances sometimes skipped one generation and appeared in the next, said that Thomas Donovan, who had sat for three weeks in his courtroom, was the "walking image" of Thomas Dolan as he knew him in his earlier days.

The interest of a story like this does not depend upon the mere outcome of the litigation in which it was involved. But a lawsuit, like a story, must have an ending, and here the judgment may well be told, for it was the end of the story. The chancellor, upon the close of the argument, at once decided in favor of the Donovan heirs, saying of those who had worked up the opposing case, "I have had serious doubts whether it was not my duty to hold them for a conspiracy."

THE RT. HONORABLE LORD MACMILLAN
Who Addressed the Association at Its Annual Meeting

Reducing the "Intellectual Proletariat"

"AN intellectual proletariat" is the striking phrase employed in an Associated Press dispatch from Athens, Greece, to designate the large and increasing number of lawyers without clients and doctors without patients. The dispatch was printed in the Philadelphia Inquirer of August 31. It states that "the Ministry of Education has decided to limit the numbers of students of law and medicine at the Universities of Athens and Salonika. Henceforth there will be only 500 instead of 850 law students at Athens and 200 at Salonika, and the medical students also will be restricted. This move is explained as due to the large numbers of lawyers without clients and doctors without patients, who form an 'intellectual proletariat.' Premier Venizelos told students who protested against stiff examinations that what was needed was a still harder test."

Results of law examinations at Paris, according to another dispatch of the same date which appeared in the Inquirer, indicate that the rush to the profession may also be somewhat moderated in France. This dispatch says, in part: " 'There are too many lawyers already,' say the lawyers who find it hard to make a living. Apparently the Faculty of Law agrees, for it 'flunked' three out of every four candidates in the recent final examinations. There were 6013 students examined in the three classes of the law course and only a few more than a fourth got through."

Washington Letter

Washington, Oct. 8

THE so-called "Shipstead anti-injunction bill," Senate 2497, is No. 884 on the Senate Calendar. Mr. Steiwer, from the Committee on the Judiciary, submitted an adverse report on the measure June 18, 1930. (Report No. 1060.) Mr. Norris submitted minority views on June 18, 1930. (Report No. 1060, Part 2.)

This measure, which seeks to amend the judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes, has been before the Senate in various forms since December 12, 1927, when it was originally proposed by Senator Shipstead.

According to the Minority view, "In order to assist the courts in the proper interpretation of the proposed legislation, it has been attempted to declare, by act of Congress, the public policy of the United States in relation to labor disputes and the issuing of injunctions in connection therewith." This is section 2 of the substitute bill. On the other hand, the Majority report holds that "Power to control or shape industrial relations is lodged with the States. (Bailey v. Drexel Furniture Co. (1922), 259 U. S. 20.)." And further, "Moreover, there is a serious question of the power of Congress to make a valid declaration of policy upon any subject which lies outside the realm of Federal authority."

"One of the objects of this legislation is to outlaw this 'yellow dog' contract," according to the Minority report, which urges that such contracts are void for several reasons, first, "They are contrary to public policy"; second, ". . . they are entered into without consideration"; and third, ". . . they are signed by the employee under coercion." On the contrary, the Majority report points out that "However distasteful such contracts may be to us, yet the fact remains that the Supreme Court in three cases has held that there is no legislative power, State or Federal, to inhibit or outlaw employment contracts providing against union membership."

"The problem then arises," says the majority report, "(1) Can the Congress by indirection through the device of the denial of remedy at law or in equity in the courts of the United States in effect invalidate a contract which is valid under the laws of the several States and beyond the legislative control of Congress?

"(2) Will not the denial by Congress of all remedies in the courts of the United States be tantamount to a declaration that such contracts are illegal?"

According to the Majority report, there would be no injunction against illegal strikes. "In other words, strikes, and combinations or conspiracies to strike or to induce strikes or to organize or maintain strikes can not be enjoined in a court of the United States. No distinction is drawn between legal or illegal strikes. Further, this denial of a remedy in equity applies even though there is no adequate remedy at law, and even though a strike may result in irreparable injury to property or to a property right." On the other hand, the Minority report stresses certain abuses of injunction power at which the measure is directed.

The majority report does not agree with the minority report that officers and members of a labor organization should not be liable for damages for unlawful acts committed while a strike is on.

According to the Majority report "the bill attempts fundamentally to change the law of agency." "As the law now stands, a corporation or an association or an individual is responsible for the acts of his or its agents when acting within the scope of employment regardless of actual participation, authorization, or ratification by the principal." Whereas the Minority contends that "to hold that officers or members of a labor organization, or the organization itself, should be liable for damages for unlawful acts committed while a strike is on, without clear, actual proof of authorization, participation in, or ratification of such unlawful acts, would go far toward the destruction of organized labor."

The Majority report agrees with the Minority "that when a trial for contempt arises from an attack upon the character or conduct of a judge, which attack is made otherwise than in open court, the alleged contemnor may demand a trial by a judge other than the judge who was subject of the attack."

According to the Majority report, the necessity for the legislation is not urgent, as disclosed by inquiry made of 88 clerks and answers from 81 clerks. "This information discloses that in the 81 U. S. district courts there is but one application for injunctive relief in labor cases pending at this time."

"The majority of the Committee," says the Majority report, "all of whose members are most friendly to labor and to labor unions, are forced to the conclusion that this substitute bill would give rise to problems much more grievous than those which it seeks to solve."

The Judiciary Committee of the Senate, on May 28, 1930, requested a report from the Attorney General on the measure, requesting his views concerning the constitutionality of the measure and the effect it would have on cases in which the Government sought equitable relief by injunction, including the effect upon the so-called "padlock" cases under the Volstead Act. The Attorney General, on June 3, 1930, in a letter to the Committee, declined to give his views because "It has been held specifically 'that the Attorney General is not authorized to give his official opinion upon the call of either House of Congress or any committee or member thereof.'"

The Minority report which recommends the enactment of the legislation is signed by Senators Norris, Blaine, Walsh, Borah, Caraway, Ashurst and Dill.

Signed Articles

As one object of the American Bar Association Journal is to afford a forum for the free expression of members of the bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of this Journal assume no responsibility for the opinions in signed articles, except to the extent of expressing the view, by the fact of publication, that the subject treated is one which merits attention.

AMERICAN BAR ASSOCIATION JOVRNAL

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JOSEPH R. TAYLOR,
MANAGING EDITOR

Journal Office: 1140 N. Dearborn Street
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JOSIAH MARVEL

Last month the Journal printed an announcement of the election of "Our New President" and also a brief sketch of the career which had so well prepared him for the task of leadership. Now, by a stroke as sudden as it was shocking to all his associates and friends, we are compelled to chronicle his death.

Josiah Marvel died just at the moment when he was about to begin his work as President with unbounded enthusiasm and with a well-defined and well thought-out objective. In Chicago, only a few days before, he had conferred with a number of members of the Executive Committee on the business of the Association, and at that conference he had spoken frankly of what he thought he could best do to render service to the profession during his term of office.

He intended to go all over the country during the coming year, visiting the State Bar Associations and other significant groups of lawyers, as the envoy of the American Bar Association to the profession-at-large. His message was to be the necessity for greater cooperation between those groups and the American Bar Association. His plan was to stimulate by every means in his power the solidarity of the lawyers throughout the land—to weld them together in support of the principles for which all of them stand. As to the concrete form which this greater cooperation was to take, he did not speak. His business, as he saw it, was to help create the willingness to assent. The rest would follow.

This plan, as he outlined it to his associates in Chicago, had the merit of growing out of actual conditions. It was timely. It was in line with the march of events. Already the idea of finding some way of achieving greater cooperation on the part of the national and state associations had come down from the ether of pious wishes to the solid ground of reality. James Grafton Rogers, in his address at Memphis before the Conference of Bar Association Delegates, started definite thinking. The report of a committee of that same section at the Chicago meeting had gone a step further. The transition from thought to definite action was at last under way.

Josiah Marvel saw and sensed all this. And he felt—and rightly—that here was a great task worth the doing and one which he was well fitted to do. We imagine that all those who were familiar with his energy and executive cast of mind would quite agree with him. And so the Association is called on to mourn not only the loss of its leader for the time being but of one who had already outlined a real campaign and promised to be one of the most effective workers for genuine and effective professional solidarity.

The Journal can add its testimony to that of others as to the enthusiasm with which he entered upon his work. He had planned to contribute to each issue, in what was to be called "The President's Column," a brief message to the Association urging in print what he was preaching by word of mouth, and giving a report of the progress of his campaign. His message, "Will start the series in next issue," came to the Journal office only a few minutes before the news of his death. It was sent just before he went home for the evening and was perhaps the last message he ever sent.

Of his career, interrupted with such incredible suddenness, it is not necessary to speak at length. Those who read the brief sketch in the October issue of the Journal will get an idea of his many and important activities. They will also learn something of the personal character of the man and realize why his death carries with it such a sense of loss to many. The profession of the law was much to him, but patriotism, charity, religion, these and other things all made their claim upon him and had their claims allowed.

"Will start the series in the next issue." Fate decreed otherwise. But of whatever is

started by the Association in future he will be a part. The old quotation is wrong: "The good men do lives after them."

MAGNA CARTA: A PAGEANT-DRAMA

The Magna Carta Pageant Copyright and Reproduction Committee is to be congratulated on the form in which the text of that really remarkable production has been published.

The little book is a fine example of printing, and the title page, with its beautiful print and the picture of the Thames meandering by the historic island, is particularly good. Facing this is a reproduction of the painting, "King John Granting the Magna Carta," by Ernest Normand, which is highly decorative. A little further on, after the introductory notes by the Committee, which had charge of the publication, is an interesting picture of the Abbey of Bury St. Edmunds in mediaeval times, from an imaginative restoration based on the present ruins. It was in this abbey that the Archbishop of Canterbury swore the Barons to resist the King and demand a grant of liberties.

It would have been worth while to publish this pageant-drama if only to place in permanent form a literary and dramatic creation of genuine worth. But what makes publication still more worth while is the fact that the piece is thereby made available for reproduction by schools, colleges and other institutions, either in or out of doors. The educational value of such a presentation will hardly be questioned by anyone who reads the text, wherein some of the principal grievances to be redressed are reduced to dramatic concreteness. Nor will the beauty of the pageant that can be presented escape one who can visualize the color and movement of the stirring scenes and situations.

In order to stimulate such reproductions and thus aid in spreading a better idea of the great beginnings of our laws and liberties among the people, the committee announces in the volume that "permission is granted for the reproduction upon the stage or by reading of all or any part of this dramatic work when the same is produced without the motive or effect of profit and before an audience of less than five thousand persons, but this work shall not be produced dramatically or by the process of reading or other reproduction either for profit, or with or without profit before an audience of more than five thousand persons without first requesting and procuring the consent of the American Bar Association in writing thereto." In other words, only in the case of very large or commercial productions is it necessary to secure permission.

MURMURS OF REVOLT?

The search for statistics now appears to dominate the field of legal improvement. Napoleon once said that "an army moves upon its belly," but today the army of legal reform seemingly inclines to move upon statistics.

For awhile, so thoroughly has the statistical approach taken hold of the profession, little was heard suggesting doubt or even impatience. Little is heard even now. But every now and then a voice is lifted up, if not to challenge the admitted utility of statistics, at least to endeavor to put them in their place. Judge Ransom of New York, in his article in the September Journal on "The Lawyer Today" says that, "without in any way disparaging informed judgment based on pertinent facts, we seem to be in a period of over-research, over-production of statistics, and over-emphasis on academic approach and detached opinion and advice." At the last meeting of the Judicial Section, in Chicago, Judge Crane of the New York Court of Appeals, said that all these statistics didn't amount to anything unless they led to something practical and definite—a saying with something of a challenge in it. However, various members of State Judicial Councils cited enough actual results to date to satisfy the judge. The strange coldness of court clerks, at least in Michigan, to bigger and better statistics was mentioned by Professor Sutherland in his address before the Conference of Judicial Councils at Chicago. And there is some reason to believe that the statistical approach of the National Crime Commission, with the subsequent delay in reaching conclusions, has rather irritated some people who know exactly what the trouble is already.

Everybody favors statistics in principle. But there seems an incipient feeling in some quarters that they should not ride everybody too hard; above all, that they should not keep the public too long in suspense, but emit, at the earliest possible moment, at least a few fragmentary oracles.

REVIEW OF RECENT SUPREME COURT DECISIONS

Jurisdiction of United States in Military Reservations—Federal Employers' Liability Act Will Be Construed Liberally to Accomplish Purpose of Congress—Operation of Motor Under Non-Resident's License in District of Columbia—Right of State to Prohibit Its Citizens From Fishing in River Over Which It Has Concurrent Jurisdiction with Another State—Federal Courts Will Not Enforce State Statute Giving Right to Contest Validity of Tax by Proceeding in Equity Where Adequate Remedy May Be Had at Law—Income From Revocable Trust—Other Tax Cases

By Edgar Bronson Tolman*

Criminal Law—Jurisdiction of the United States in Military Reservations

The United States has exclusive jurisdiction of land acquired in a state for purposes specified in the Constitution where the land is purchased with the consent of the state. But the jurisdiction ceded by the state in other cases is subject to such conditions as the state may impose, consistent with the purpose of the acquisition of the land.

Where the jurisdiction ceded is to continue no longer than the United States shall own and occupy the land in question the grant of a right of way to a railroad company over the land will not remove from federal jurisdiction the land covered by the right of way.

United States v. Unzeuta, Adv. Op. 453; Sup. Ct. Rep. Vol. 50, p. 284.

The appellee was indicted in a federal court for murder alleged to have been committed on a freight car on the right of way of the Chicago & Northwestern Railway Company on the Fort Robinson Military Reservation in Nebraska. He filed a plea to the jurisdiction of the United States, contending that the right of way was within the jurisdiction of Nebraska. The district court sustained the plea; but on appeal, brought under Criminal Appeals Act, the ruling was reversed by the Supreme Court in an opinion by the Chief Justice.

Upon Nebraska's admission to the Union, the United States retained all right and title to unappropriated public lands in the territory and later reserved a portion of such lands for the Fort Robinson Military Reservation. Thereafter, in 1885, Congress granted the right of way in question to a railroad corporation across the Reservation, the location of the right of way to be subject to the approval of the Secretary of War. In 1887 Nebraska ceded to the United States jurisdiction over the Reservation upon condition that such jurisdiction should continue no longer than the United States owned and occupied the Reservation; that Nebraska should retain concurrent jurisdiction to effect civil process in all cases and criminal or other process under the state law against persons charged with crime under the state law, except process affecting property of the United States; and that nothing in the Act should prevent the opening and repairing of public highways across the Reservation.

After stating these facts bearing on the case the Court pointed out the difference in the extent of federal jurisdiction depending on the mode of acquisition of the land in question. When land is acquired with the consent of the state "for the erection of forts, magazines, arsenals, dockyards and other needful buildings," the federal jurisdiction is exclusive. But when it is otherwise acquired the land and buildings will be free from such interference and jurisdiction of the state as would impair the effective use for the purposes for which the land is acquired, and the jurisdiction ceded over the land will be subject to such conditions as the state may impose consistent with the purpose of acquisition. In such cases the terms of cession, so far as lawfully prescribed, determine the extent of federal jurisdiction:

> "In the present instance, there is no question of the status of the Fort Robinson Military Reservation. Nebraska ceded to the United States its entire jurisdiction over the reservation save in the matter of executing process and opening and repairing roads or highways. It was in this view that the Federal Circuit Court decided that, after this jurisdiction had been accepted by the United States, it could not be recaptured by the action of the State alone, and hence that an act of the legislature of Nebraska, passed in 1889, seeking to amend the act of cession was not effective, and that the statutes of the State regulating the sale of liquors were not in force within the ceded territory. . . . The conditions of the cession relating to the execution of criminal process were construed as intended to save the right to execute process within the reservation for crimes committed outside, that is, to prevent the reservation from being a sanctuary for fugitive offenders."

Turning then to a consideration of the conditions attached to the cession, the Court found nothing therein expressly or impliedly excluding the right of way from federal jurisdiction:

> "The proviso that the jurisdiction ceded should continue no longer than the United States shall own and occupy the reservation had reference to the future and cannot be regarded as limiting the cession of the entire reservation as it was known and described. As the right of way to be located with the approval of the Secretary of War ran across the reservation, it would appear to be impracticable for the State to attempt to police it, and the Federal jurisdiction may be considered to be essential to the appropriate enjoyment of the reservation for the purposes to which it was devoted. There is no adequate ground for cutting down the grant by construction. . . .
>
> "The mere fact that the portion of the reservation in question is actually used as a railroad right of way is not controlling on the question of jurisdiction. Rights of way for various purposes, such as for railroads, ditches, pipe lines, telegraph and telephone lines across Federal reservations, may be entirely compatible with exclusive jurisdiction ceded to the United States. In *Benson v. United States,* . . . the jurisdiction of the Federal Court was sustained with respect to an indictment for murder committed on a portion of the Fort

*Assisted by James L. Homire.

Leavenworth Military Reservation in Kansas which was used for farming purposes. In *Arlington Hotel Company v. Fant*, . . . the jurisdiction of the United States was upheld as to the portion of the reservation there in question which had been leased for use as a hotel. While the grant of the right of way to the railroad company contemplated a permanent use, this does not alter the fact that the maintenance of the jurisdiction of the United States over the right of way, as being within the reservation, might be necessary in order to secure the benefits intended to be derived from the reservation."

The case was argued by Assistant Attorney General Seth W. Richardson for the government and by Mr. Allen G. Fisher for the appellee.

Federal Employers' Liability Act—Negligence

The Federal Employers' Liability Act will be construed liberally to accomplish the purpose of Congress to stimulate carriers to greater diligence for the safety of their employees and of the persons and property of their patrons. Accordingly, liability for injuries resulting to an employee by reason of the negligence of another employee will be construed to include injuries resulting from an assault committed in furtherance of the employer's business.

Jamison v. Encarnacion, Adv. Op. 575; Sup. Ct. Rep. Vol. 50, p. 440.

This case involved the question whether an employing stevedore is liable to his employee for personal injuries sustained in an assault by the foreman who had supervision over the plaintiff, or whether liability is limited to negligence.

The jury found that the assault on the plaintiff, a stevedore, was committed in furtherance of the master's work and a judgment for the plaintiff was entered on the verdict. The Merchant Marine Act, Section 33, gives to seamen the rights conferred on railway employees by the Federal Employers' Liability Act. The latter imposes upon every common carrier by railroad, engaged in interstate commerce, liability for injuries sustained in employment in interstate commerce "resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier."

The New York Court of Appeals affirmed a judgment for the plaintiff and on certiorari its judgment was affirmed by the Supreme Court in an opinion by MR. JUSTICE BUTLER. The contention considered was that the statute limits liability of the employer to injuries resulting from negligence and does not include injuries resulting from misconduct of another employee as was the case here. In rejecting this contention, the Court first pointed out that the plaintiff was a seaman within the meaning of Section 33 of the Merchant Marine Act, under *International Stevedore Co. v. Haverty*, 272 U. S. 50.

The main question was then discussed as follows:

"The question is whether 'negligence' as there used includes the assault in question. The measure was adopted for the relief of a large class of persons employed in hazardous work in the service described. It abrogates the common law rule that makes every employee bear the risk of injury or death through the fault or negligence of fellow servants and applies the principle of respondeat superior (Sec. 1), eliminates the defense of contributory negligence and substitutes a rule of comparative negligence (Sec. 3), abolishes the defense of assumption of risk where the violation of a statute enacted for the safety of employees is a contributing cause (Sec. 4) and denounces all contracts, rules and regulations calculated to exempt the employer from liability created by the Act. Sec. 5.

"The reports of the House and Senate committees having the bill in charge condemn the fellow-servant rule as operating unjustly when applied to modern conditions in actions against carriers to recover damages for injury or death of their employees and show that a complete abrogation of that rule was intended. The Act, like an earlier similar one that was held invalid because it included subjects beyond the reach of Congress, is intended to stimulate carriers to greater diligence for the safety of their employees and of the persons and property of their patrons. . . .

"The rule that statutes in derogation of the common law are to be strictly construed does not require such an adherence to the letter as would defeat an obvious legislative purpose or lessen the scope plainly intended to be given to the measure. . . The Act is not to be narrowed by refined reasoning or for the sake of giving 'negligence' a technically restricted meaning. It is to be construed liberally to fulfill the purposes for which it was enacted and to that end the word may be read to include all the meanings given to it by courts and within the word as ordinarily used. . .

"As the Federal Employers' Liability Act does not create liability without fault . . . it may reasonably be construed in contrast with proposals and enactments to make employers liable, in the absence of any tortious act, for the payment of compensation for personal injuries or death of employees arising in the course of their employment.

"'Negligence' is a word of broad significance and may not readily be defined with accuracy. Courts usually refrain from attempts comprehensively to state its meaning. While liability arises when one suffers injury as the result of any breach of duty owed him by another chargeable with knowledge of the probable result of his conduct, actionable negligence is often deemed—and we need not pause to consider whether rightly—to include other elements. Some courts call willful misconduct evincing intention or willingness to cause injury to another gross negligence. . . And it has been held that the use of excessive force causing injury to an employee by the superintendent of a factory in order to induce her to remain at work was not a trespass as distinguished from a careless or negligent act. . . While the assault of which plaintiff complains was in excess of the authority conferred by the employer upon the foreman, it was committed in the course of the discharge of his duties and in furtherance of the work of the employer's business. As unquestionably the employer would be liable if plaintiff's injuries had been caused by mere inadvertence or carelessness on the part of the offending foreman, it would be unreasonable and in conflict with the purpose of Congress to hold that the assault, a much graver breach of duty, was not negligence within the meaning of the Act."

The case was argued by Mr. Theodore H. Lord for the petitioners and by Mr. William S. Butler for the respondent.

Motor Vehicles—Operation Under Non-Residents' License—Effect of Revocation of License

Under the District of Columbia Traffic Acts, the provision exempting a non-resident operating under a license granted by a reciprocity exemption state from the requirement of obtaining an operator's license from the District before operating a motor vehicle therein does not extend to a non-resident, who formerly resided in the District and whose District license has been revoked.

District of Columbia v. Fred, Adv. Op. 243; Sup. Ct. Rep. Vol. 50, p. 163.

The respondent here was convicted in the District of Columbia police court under § 13 (d) of the Traffic Acts of the District for driving a motor vehicle in the District during the unexpired period of his operator's license or permit after the license or permit had been revoked. He contended that under the reciprocity provisions of the Traffic Acts he was exempt from the provisions of § 13 (d) by reason of the fact that he had subsequently established his residence in Virginia, a reciprocity state, and was driving under a Virginia license which he had obtained from that state. The alleged violation took place while the respondent was temporarily in the district while he was driving under his Virginia license and while his car was equipped with Virginia license tags.

Under § 7 all persons operating motor cars within the District are required to have an operator's license or permit which is revocable for cause under § 13 (a). But by § 8 the requirement of § 7 that the operator have a permit is dispensed with in favor of non-resi-

dents operating under license of a state granting similar exemption to residents of the District.

The Court of Appeals of the District set aside the conviction, but its decision was reversed by the Supreme Court in an opinion by MR. JUSTICE STONE. Explaining the Court's view of the proper construction of the statute MR. JUSTICE STONE said:

"The court below, in setting aside the conviction, rested its decision on the ground that this provision 'expressly relieves the non-resident owner or operator of a motor vehicle, who has complied with the laws of his state respecting registration and operators' licenses from either registering his vehicle here or obtaining a local operator's permit, provided only that similar privileges are extended to residents of the District in that state.' But respondent was not charged with violation of §7, which forbids operating without a license, or of any provision or regulation requiring the registration of motor vehicles, which are the only offenses exempted under §8. He was charged with a different offense, under §13 (d), that of operating a vehicle within a specified time after the revocation of his permit, for which a different penalty is provided than for violations of §7. It is significant that the exemption clause in §8 (a) specifically refers to §7 but makes no mention of §13 (d).

"If the clause were ambiguous or there were any room for construing it, examination of the whole act makes evident its general purpose not to extend to non-residents any reciprocal privilege beyond relieving them from the necessity of procuring a District operator's license and complying with provisions for the registration of their vehicles, and that all other requirements of the Act and penalties for non-compliance were left in full force and effect. By §13 (c) the right to operate a car in the District under the license or permit of a state may be suspended and operation of the car in the District during the period of suspension is punishable under §13 (d). It cannot be supposed that any distinction was intended to be drawn between the consequences of operating a car within the District by one whose right to operate under a foreign license had been suspended and one whose right to operate under a District license had been revoked or suspended. We can find nothing in the sections cited or the Traffic Acts as a whole to suggest that there is."

The case was argued by Mr. Richmond B. Keech for the petitioner and by Mr. S. McComas Hawken for the respondent.

Statutes—Preservation of Fish and Game

A state having concurrent jurisdiction with another state over a river forming the boundary between the two may prohibit its citizens from fishing in the part of such river within its territorial limits, and may prohibit them from having possession of the special instruments of violation of the prohibition against fishing.

Miller v. McLaughlin et al. Adv. Op. 401; Sup. Ct. Rep. Vol. 50, p. 296.

This case involved a suit brought by a resident of Nebraska against certain state officials to enjoin enforcement of a statute of that State. The statute in question prohibited the taking of "any fish except minnows from the waters within the state of Nebraska with nets, traps or seines," and made possession of them unlawful "except as authorized by the Department of Agriculture."

The Missouri River forms part of the boundary line between Iowa and Nebraska. An Iowa statute declares it lawful for any person to take fish with nets or seines from the Mississippi or Missouri Rivers within its jurisdiction upon procuring an annual license from the game warden. The petitioner (plaintiff) asserted that Nebraska was without power of itself alone to prohibit fishing in the Missouri River, even in that portion of it in Nebraska. This assertion was based upon the Act of Congress admitting Iowa into the Union which granted it "concurrent jurisdiction. . . . on . . . every . . . river bordering on the said State of Iowa, so far as the said river(s) shall form a common boundary to said State." He also asserted that prohibition of possession of innocuous traps, nets and seines violates the Fourteenth Amendment.

Reviewing the case on certiorari the Supreme Court rejected both of the petitioner's contentions, in an opinion by MR. JUSTICE BRANDEIS.

"The grant of concurrent jurisdiction to Iowa does not deprive Nebraska of power to legislate with respect to its own residents within its own territorial limits. . . While the two States have not concurred in this legislation, there is no conflict between them. Each has legislated only as to that part of the river which is within its own territorial limits. It is unnecessary to consider the questions which might arise if Nebraska undertook to prohibit the fishing on Iowa's part of the river, or if Miller were a citizen of Iowa and fished under an Iowa license. . . Neither Miller, nor any of the persons in whose behalf he brought the suit, have licenses from Iowa; nor does it appear that they could obtain them.

"The claim under the Fourteenth Amendment is also groundless. A State may regulate or prohibit fishing within its waters, . . . and, for the proper enforcement of such statutes, may prohibit the possession within its borders of the special instruments of violation, regardless of the time of acquisition or the protestations of lawful intentions on the part of a particular possessor." . . .

The case was argued by Messrs. Seymour L. Smith and A. Henry Walter for the petitioner and by Mr. C. A. Sorenson for the respondents.

Taxation—State Taxes—Equitable Relief Against Collection Where Adequate Legal Remedy Exists

Where the right to contest the validity of a state tax by proceeding in equity is created by state statute, remedial in character, such right will not be enforced in equity in the federal courts, if an adequate remedy may be had at law.

Henrietta Mills v. Rutherford County, et al, Adv. Op. 444; Sup. Ct. Rep., Vol. 50, p. 270.

The petitioner, a North Carolina corporation, brought suit in a federal district court to enjoin Rutherford County, in North Carolina, from collecting a tax upon property of the corporation for the year 1927 and subsequent years, based upon any valuation in excess of 60 per cent of its fair market value. It alleged that enforcement of such a tax would violate the Fourteenth Amendment and that the tax officials of the county and state had intentionally and arbitrarily valued its property greatly in excess of its true value, while at the same time they had fixed the value of all other assessable property at only 60 per cent of its true value; and that it had paid all taxes which would be equal to the tax laid upon 60 per cent of the value of its property.

The answer denied that there had been any arbitrary and intentional overvaluation or discrimination against the taxpayer, and alleged that it had an adequate remedy at law. The district court dismissed the bill of complaint and its decree was affirmed by the circuit court of appeals. On certiorari this was affirmed by the Supreme Court in an opinion by the CHIEF JUSTICE.

In disposing of the case attention was first called to section 16 of the Judiciary Act of 1789 (section 267 of the Judicial Code) providing that suits in equity shall not be sustained where a plain, adequate and complete remedy may be had at law.

The petitioner's contention that that provision is not applicable here, because the right to proceed in equity is a statutory right in North Carolina, was then adverted to. In considering this point it was assumed that the state statutory provision relied upon as construed by the state court, does afford equitable relief in a case such as that involved here. But it was pointed

out that, nevertheless, an adequate remedy at law exists, and that an equitable right under a state statute must be substantive in character to be enforceable in equity in a federal court, where an adequate legal remedy exists.

"The contention is that the state statute authorizing a proceeding in the state court for an injunction created an equitable right which should be enforced in the Federal court. It is true that where a state statute creates a new equitable right of a substantive character, which can be enforced by proceedings in conformity with the pleadings and practice appropriate to a court of equity, such enforcement may be had in a Federal court provided a ground exists for invoking the Federal jurisdiction. . . . But the enforcement in the Federal courts of new equitable rights created by States is subject to the qualification that such enforcement must not impair any right conferred, or conflict with any inhibition imposed, by the Constitution or laws of the United States. This Court said in *Scott v. Neely*, 140 U. S. 106, 110, that 'whenever, respecting any right violated a, court of law is competent to render a judgment affording a plain, adequate and complete remedy, the party aggrieved must seek his remedy in such court, not only because the defendant has a constitutional right to a trial by jury, but because of the prohibition of the act of Congress to pursue his remedy in such cases in a court of equity.' . . . Whatever uncertainty may have arisen because of expressions which did not fully accord with the rule as thus stated, the distinction, with respect to the effect of state legislation, has come to be clearly established between substantive and remedial rights. A state statute of a mere remedial character, such as that which the petitioner invokes, can not enlarge the right to proceed in a Federal court sitting in equity, and the Federal court may, therefore, be obliged to deny an equitable remedy which the plaintiff might have had in a state court. . . .

"The provision of the act of Congress does not extend to the jurisdiction of the Federal court, but governs the proceedings in equity and, unless the case is one where the objection may be treated as waived by the party entitled to raise it, the prohibition is not to be disregarded. . . . There was no waiver in the present case, and as the petitioner had an adequate remedy at law, the District Court could not properly entertain the suit."

The case was argued by Mr. Willis Smith for the petitioner and by Mr. Clyde R. Hoey for the respondents.

Taxation—Income Taxes—Income from Revocable Trust

Under the Revenue Act of 1924 income paid to beneficiaries under a trust revocable by the trustor is taxable as income of the trustor.

Corliss v. Bowers, Adv. Op. 473; Sup. Ct. Rep. Vol. 50, p. 336.

The question involved in this suit was whether, under the Revenue Act of 1924, the income from a trust fund established in 1922 for the benefit of the trustor's wife and children was taxable as income to the trustor who had reserved the power to alter or revoke the trust at any time and in any manner. The statute provides that

"when the grantor of a trust has, at any time during the taxable year, . . . the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor."

There was no doubt that the statute purported to tax the trustor in respect of the income here, but he contended that since the income had in fact been paid to the designated beneficiary it never was the trustor's and that, therefore, constitutionally, he cannot be taxed for it.

Rejecting this contention as unsound MR. JUSTICE HOLMES said:

"But taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed—the actual benefit for which the tax is paid. If a man directed his bank to pay over income as received to a servant or friend, until further orders, no one would doubt that he could be taxed upon the amounts so paid. It is answered that in that case he would have a title, whereas here he did not. But from the point of view of taxation there would be no difference. The title would merely mean a right to stop the payment before it took place. The same right existed here although it is not called a title but is called a power. The acquisition by the wife of the income became complete only when the plaintiff failed to exercise the power that he reserved. . . . Still speaking with reference to taxation, if a man disposes of a fund in such a way that another is allowed to enjoy the income which it is in the power of the first to appropriate it does not matter whether the permission is given by assent or by failure to express dissent. The income that is subject to a man's unfettered command and that he is free to enjoy at his own option may be taxed to him as his income, whether he sees fit to enjoy it or not. We consider the case too clear to need help from the local law of New York or from arguments based on the power of Congress to prevent escape from taxes or surtaxes by devices that easily might be applied to that end."

The Chief Justice took no part in this case.

The case was argued by Mr. Joseph M. Hartfield for the petitioner and by Mr. Solicitor General Hughes for the respondent.

Taxation—Income Taxes—Limitation on Suits to Recover Taxes—Effect of Unverified Return

An unverified income tax return is insufficient to meet the requirements of the Revenue Act of 1918, and therefore will not cause the statute of limitations to begin to run, where the statute fixes the date of the filing of the return as the date on which the period of limitation shall begin.

Lucas v. The Pilliod Lumber Co. Adv. Op. 391; Sup. Ct. Rep. Vol. 50, p. 297.

This case involved a question as to the effect on the statute of limitations of filing an income tax return not duly verified, as required by statute. The taxpayer had filed a tentative return on Form 1031T covering estimated income and profits taxes for 1918, signed and sworn to by its president and treasurer. Later, on May 31, 1919, it presented another return on Form 1120 which was not signed or sworn to. On September 17, 1923, in response to a request from the Commissioner the taxpayer filed an affidavit relating to the unverified return of May 31, 1919, stating that "We, the undersigned, hereby affirm that our names should have appeared on our income tax return for 1918, and which to the best of our knowledge and belief is correct. We are unable to furnish duplicate signed report, being unable to locate copy, believing same to have been destroyed with other records."

Thereafter, on October 23, 1925, the Commissioner notified the Company of a deficiency assessment of $963.34. The taxpayer asserted that claim for this was extinguished by the five-year statute of limitations, and it accordingly appealed to the Board of Tax Appeals. That Board ruled that neither the tentative nor the sworn return was enough to start the statute running, and affirmed the ruling of the Commissioner. The Circuit Court of Appeals reversed this on the ground that the statute commenced to run upon the filing of the unsworn return. On certiorari this was reversed in the Supreme Court in an opinion by Mr. Justice McReynolds.

The Act of 1918 requires returns to be sworn to by an officer of the corporation subject to the tax, § 239, that the tax due shall be determined and assessed within five years after the return was due or made, and that no suit or proceeding for collection of the tax shall be

begun "after the expiration of five years after the date when the return was *due or* was made."

The Act of 1924 provides that taxes for 1918 shall be assessed within five years after the return was filed, and shall be assessed, collected and paid subject to the same provisions and limitations as imposed by the Act of 1924, with certain exceptions. It also provides that no proceeding for collection shall be commenced after the expiration of the five year period following the filing of the return.

The taxpayer contended that, even though the unsworn return was insufficient to meet the statutory requirements, the defect was cured or became immaterial since the tax officers accepted and held the return for several years and obtained an adequate verification later. Rejecting this contention MR. JUSTICE MCREYNOLDS said:

"Under the established general rule a statute of limitation runs against the United States only when they assent and upon the conditions prescribed. Here assent that the statute might begin to run was conditioned upon the presentation of a return duly sworn to. No officer had power to substitute something else for the thing specified. The return so long as it remained unverified by oath of proper corporate officers did not meet the plain requirements. The necessity for meticulous compliance by the taxpayer with all named conditions in order to secure the benefit of the limitation was distinctly pointed out in *Florsheim Bros., etc. v. United States*. . . .

"The Board of Tax Appeals reached the proper result. The judgment of the court below must be reversed."

The case was argued by Assistant Attorney General Youngquist for the petitioner and by Mr. Henry M. Ward for the respondent.

Taxation—Income Taxes—Method of Inventory

Where it is necessary to use inventories to determine taxable income, stock on hand which is not an income producing factor must be inventoried at its cost or at market value, whichever is lower, and cannot be inventoried at a constant price or nominal value without reference to actual cost or market value.

Lucas v. Kansas City Structural Steel Co. Adv. Op. 430; Sup. Ct. Rep. Vol. 50, p. 263.

This case involved a question as to the method of valuation of material carried in stock in determining the respondent's income tax for 1918 and 1920. For these two years its income taxes were increased $7,656.74 and $15,953.36 respectively under determinations made by the Commissioner of Internal Revenue, and were due solely to changes made by him in the inventory valuation of material carried in stock. The respondent, Kansas City Structural Steel Company, valued at a constant price all the material which did not exceed what it claimed to be a normal stock on hand. The Commissioner revalued this material at current market prices; and his revalution produced an increase in income taxes for the years in question. The Board of Tax Appeals sustained the Commissioner's ruling, but the Circuit Court of Appeals reversed the decision. On certiorari the Commissioner's action was upheld by the Supreme Court in an opinion by MR. JUSTICE BRANDEIS.

The Revenue Act of 1918, § 203, provides: "That whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income." The Regulations, Article 1581, require the use of inventories wherever "the production, purchase, or sale of merchandise is an income-producing factor." Article 1582 declares that the basis of valuation "most commonly used by business concerns and which meets the requirements of the revenue act is (a) cost or (b) cost or market, whichever is lower;" that "goods taken in the inventory which have been so intermingled that they cannot be identified with specific invoices will be deemed to be . . . the goods most recently purchased"; that the taxpayer must satisfy the commissioner of the correctness of the prices adopted; "and that; (d) Using a constant price or nominal value for a so-called normal quantity or goods in stock" is not in accord with the regulations.

The Company engaged in the fabrication and erection of steel plates for buildings, bridges, etc., and orders from mills materials for each structure or contract. It keeps a supply of materials on hand in order to avoid delays in obtaining material. This supply was 5,554 tons at the end of the year 1916, which was inventoried at cost, $1.70 per hundredweight f. o. b. Pittsburgh. The stock on hand up to 5,554 tons was valued at that price for each year thereafter until 1921, regardless of actual cost or market. All in excess of the 5,554 tons was valued at cost or market price, whichever was lower. The actual cost of the stock on hand here in question was not shown, nor was it shown to be as low as $1.70.

In disposing of the case the Court first discussed the reasons for rejection of the "base stock" method of inventory, and said:

"It is not contested that if inventories are necessary in order to determine the Company's income, the 'base stock' method does not fulfill the desiderata. The Federal income tax system is based upon an annual accounting period. This requires that gains or losses be accounted for in the year in which they are realized. The purpose of the inventories is to assign to each period its profits and losses. In years of rising prices, the 'base stock' method causes an understatement of income; for it disregards the gains actually realized through liquidation of low price stock on a high price market. In times of falling prices, it causes an overstatement of income; for it ignores the losses which result from the consumption of high price stock. This method may, like many reserves which business men set up on their books for their own purposes, serve to equalize the results of operations during a series of years. But it is inconsistent with the annual accounting required by Congress for income tax purposes. It results in offsetting an inventory gain of one year against an inventory loss of another, obscures the true gain or loss of the tax year and, thus, misrepresents the facts. It does not conform with the general or best accounting methods and is apparently obsolete. The Company disclaims any defense of the base stock method; and the lower court disapproved it."

The Court then considered the respondent's contention that the inventory requirement is not applicable to its stock to the extent of 5,554 tons, for the reason, as urged by the respondent, that this stand-by stock has no relation to the company's profits which are derived from performance of building contracts, that the stock on hand is similar to machinery and equipment and is not an income producing factor. Rejecting this contention, the Court said:

"The Company's purchase and production of steel plates is obviously an income producing factor. Throughout the years, the Company has varying amounts of material on hand. The value of the particular material used, at the time of use, plainly affects its profits. That the material is replaced in kind and its amount kept within some limits is not exceptional and is of no significance. Most concerns strive ordinarily to carry no more stock than is required for the safe and profitable conduct of the business. They plan neither to run short nor to overstock. They replace supplies as they are consumed. And the cost or

value of the new material is properly reflected in the later inventories and returns. There is nothing peculiar about the 5,554 tons—except that that happened to be the amount of stock on hand on December 31, 1916. It is not a permanent stock, like machinery or equipment. Nor is it merely depleted by borrowing and promptly restored to that fixed size. On the contrary, the stock has fluctuated from about 3,000 tons in 1918 to 11,000 tons in 1920. There is no stand-by stock set aside and ear-marked as such. The material is all comingled and is indiscriminately used in production, as and when needed. No reason is given for excepting 5,554 tons—no more and no less. To draw an artificial line at that amount would distort the computation of income in the accounting periods, although the errors might be equalized in a series of years. Since inventories are properly deemed necessary, the exception of that or any amount is nothing but the use of the discarded 'base stock' method."

The Chief Justice took no part in this case.

The case was argued by Solicitor General Hughes for the petitioner and by Mr. Armwell L. Cooker for the respondent.

BAR EXAMINATIONS

Confusion as to Proper Function of Bar Examinations and Also as to How They Actually Work in Practice—Conclusions Reached as Result of Experience in New York State—Method of Grading by Absolute, Purely Subjective or Objective Standards—Details as to Application of Objective Standard—Examinations Cannot Be Relied on to Meet the Problem of Volume or Ethics*

By Philip J. Wickser
Member of the Buffalo Bar

"Is examination an art? Many American . . . teachers will at once reply: 'No, it is an evil'."[1] Thus speaks President Lowell, of Harvard, and goes on to say that, in this country, we have not considered with sufficient care the object, scope and utility of examinations, with the result that the art of giving them is still in its infancy, imperfect and exceedingly difficult. I agree with him. As to bar examinations, in particular, considerable confusion seems to exist, first of all, as to what their proper function is, and, secondly, as to how they actually do function.

If all the requirements for admission to the bar, today, were tested solely by means of bar *examinations*, their proper function would be to insure the admission of applicants possessed of cultural breadth, legal ability and good moral character—and, equally, to insure the exclusion of those who are deficient in these qualities. The courts, which, in the American political scheme, in contrast to that obtaining in England and in France, have been charged with control over admission to the bar, have not relied entirely upon Boards of Law Examiners to distinguish between applicants in all of these respects. Colleges and often, secondary schools have been relied upon to winnow out those who can not, or will not, achieve sufficient academic excellence, and special committees are charged with the duty of garnering and examining local reputation in sufficient quantity to make an assay of what passes for character. The disjunctivity inherent in three million square miles of land and sky is, perhaps, one reason why the profession here has never been induced to think of the whole problem in terms of itself, as has been the case in Canada and abroad. But economic pressure is an excellent stimulator and the laity, as well as the generality of the bar, are beginning to ask us, pointedly, why so many students are enrolled in the law schools, why so many are annually admitted to the bar, and whether we think the result is all that it should be. Not without a certain naivete they expect bar examiners to furnish them with the answer to these questions, or at least with adequate explanations.

Of course, I charge this audience with no such impatience. On some other occasion it will doubtless consider to what extent our whole approach ought to be altered. But will the problem, from the point of view of the public, completely disappear when we have only applicants sheathed in collegiate diplomas knocking at the door? Or is such a requirement, perhaps subconsciously, also designed to discourage some fifty or sixty per cent of the present teeming mass, who would be just as difficult to assimilate were they each possessed of a doctor's degree? The country has struggled along, as you know, on the scant ratio of one and one-third lawyers per thousand of the population, for the last fifty years, and is doing so now. But, since the war, the accelerator has advanced nearly three hundred per cent. Though it advance no further this will yield us, in 1940, some two hundred and fifty thousand lawyers, against half that number who measurably served our needs in 1920. We say that we should be better pleased if these onrushing applicants knew how to spell correctly; if they could, uniformly, use good English; if some of them did not labor under the impression that the name of the 20th President was Garfinkle, and if others did not allude to a general denial as a "traversitie." But would we? If, when highly polished, they all were to be admitted to our arena we may be reasonably sure that large quantities of them would, nevertheless, be vanquished economically, and, that additional numbers would, furtively, do things they

*Address delivered before Section of Legal Education of the American Bar Association at its recent meeting in Chicago. Slightly abbreviated.

1. *The Art of Examination:* A. L. Lowell. Atlantic Monthly, Jan., 1926.

ought not to do. It has never yet been demonstrated that learning and success and probity are interchangeable terms.

If, then, we are at a loss to find some norm to which to tie—some quantative and regulatory formula in terms of the legitimate needs of our civilization; if, upon honest search, we must admit that any standard of pre-legal and legal educational requirements, however lofty, has been fashioned, to some extent, out of abstractions, it is clear that we shall not find our answer in a narrow scrutiny of the results of bar examinations, nor yet in any clinical observation of them in action. Prognosis and prescription in this clinic may help us to do better the work upon which we are engaged, but can give us no assurance that we *are* doing what we want to do.

We can not, even, be sure of the desirability of the highest educational requirements; at least we can not measure, negatively, their price. We can not tell to what extent the necessity to produce a collegiate degree and a diploma from a full time law school may shut out the Abraham Lincolns and John G. Johnsons now embryonically concealed in our midst, though we in New York know that for ten years the group which had neither advantage, while small and of lowest average of excellence, produced, proportionally, the most men attaining the highest marks. Perhaps, for the good of the whole, the price is not too high. When I observe the utter, almost vicious, inadequacy displayed by the papers of the average educational pauper, I am tempted to agree that it is not. Nevertheless, we have no sure guide, quantitatively. Our profession has not yet become a guild and lacks its regulatory mechanism. Proposed remedies, such as a junior probationary bar, a stratified bar or a nether bar, are still in the academic stage, pale and fanciful to the legislative mind. Strict educational requirements promise some retardation of the mass with some crucifixion of individuals, but control neither the ethics nor the volume of the crop. In this confusion too much reliance need not be placed on bar examinations. As I shall attempt to show, presently, no absolute standard of intellectual excellence exists for them to tie to. Smooth working and consistent though they be made, they can, at best, give but one guess among many as to what the answer to the foregoing deeply reverberating questions may be. For the most part, their guess turns out to be what they think *you* would want it to be. The published reports of the percentage of applicants passing in each of the several states during the last ten years demonstrates this. Each year, in any state, it remains about the same. It is conditioned, not wholly upon criteria extracted from the papers of the candidates, but, rather, chiefly, upon external speculations and gropings. In New York, for instance, when we examine six thousand men, as we did last year, we can select a thousand or fifteen hundred of them and positively demonstrate that they are qualified, intellectually, by any standard whatsoever, and also that about an equal number show positive disqualification. But what shall we do with the intermediate three or four thousand? We can grade them in terms of themselves, accurately, but when we draw the decisive line we are, in a sense, no less arbitrary than the professor whose habit it was to throw all the papers, unread, down the staircase, and pass those which fell face upwards. And if arbitrary, we are arbitrary because no philosophy, nobody of considered opinion as yet exists, touching the larger aspects of the problem. In national terms it scarcely exists as a problem at all.

The third mechanism upon which reliance has been placed, in defining admission to practice, is an examination of, or inquiry into, "Character," to which is sometimes added the indeterminate phrase, "and fitness." This, it is thought, shall be a qualitative if not quantitative, control, and, in theory, in being the one, it may also be the other. Excepting neighborhood reputation, the data upon which it acts is, for the most part, subjective, for it is not easy to obtain a kardiograph of moral heartbeats. In the metropolitan centers what passes for neighborhood reputation partakes of vagueness also, because it is so hard to verify. To make matters more difficult, the phalanx of applicants persists in responding perfectly to whatever catechism or ritual it thinks the Committee favors. With nicely timed intensity, assurances will be forthcoming comprehending reverence for the Constitution and the *status quo,* generally; abhorrence of the Soviet and all its works; endorsement of the Ten Commandments without reserve, and devotion to altruism one hundred per cent, and all the time. The Committee is then at liberty to collate and apply its impressions and to perform the distasteful task of turning back such men, at the final threshhold, as it thinks to be dangerous citizens. To what extent it does so I am unaware, though I assume that the percentage must necessarily be exceedingly small. The power of suggestion resident in the whole procedure is tremendous and makes for good upon minds that are still impressionable. The process, also, can and does detect and exclude certain definitely unfit individuals. But, by and large, the ethical content of the group which is sworn in this year, is of the same level as was the ethical content of the group which entered the law schools three years ago. They are destined to dilute or elevate the standards of the profession quite independently of any eleventh hour inspection that can possibly be made of them. Which they will do depends, to a large extent, upon factors which do not become operative until after they have begun to practice, chief of which is tightening competition implicit in swelling numbers, and all the difficult readjustments which it calls forth. Again we return to the earlier statement of the problem and view it in its quantitative aspects. We ask ourselves, not whether a particular group is composed of high-minded young men, but whether our profession has adjusted itself internally, as to its growth, and as to the diversification and delimitation of its functions, so as to best serve the whole public. Poor service begets a withdrawal of confidence and, eventually, plenty of internal friction. Neither will be remedied by the plea that to-morrow's changed conditions ought to be measured by yesterday's old and familiar, but outmoded norms.

Bar examinations, themselves, can, of course play but a small part in an appraisal of character and fitness. As my colleague Mr. Sanford, has put it, we give questions based on the Canons of Ethics because the Rules command us to do so, but conscious that the greatest rogue may write the

most pious answers. The psychologists have devised a test whereby candidates are directed to draw a circle and then, with closed eyes and poised pencil, attempt to make twenty dots within the circle in twenty tries. When the papers are examined any in which all of the dots appear within the circle are thought to indicate that the candidate did not keep his eyes closed, but cheated. I am not sure that this method of discovering character would appeal to the courts, which, on the whole, have evinced a certain conservatism about psychologists.

Some states have attempted to build up a record upon the basis of which to appraise the candidate's character. He reports periodically from the time he begins to study. Here again the potency of suggestion is great and is useful, but affidavits and letters to the contrary notwithstanding, young men aged twenty-two, when regarded by the thousand, can not produce much by way of a record that is valuable. I suppose the best data upon which to make an appraisal of character is an accurately written obituary notice. Conclusions based on less sometimes turn out to be false prophecies. Character, after all, is a thing that flows, eddied here and there, as it runs its course, by social suggestion and sharply jutting daily wants. "Manners maketh man" is the motto of a great college, and some say that manners, and morals, too, for that matter, are merely tested and thoroughly advertised conventions, born of, and dependent upon, a matured group consciousness. "I am a Roman citizen" said St. Paul and might have added: "I belong to a highly organized group and I know what is expected of me and for me." When our profession has achieved a similar feeling of solidarity; when we have instilled in the 45,000 young men and women now preparing to enter it, that sense of exaltation which comes with self-dedication, and extended to them a joint proprietorship with us, in a body of ideals, and a "way" of life, there may, perhaps, be less necessity to attempt to weigh imponderables, and less anxiety as to how this year's initiates are going to behave ten years hence. Character thrives and manners improve upon good and honorable acquaintance. Let us, therefore, resolve to become better acquainted within our own house, and even, perchance, to spend a little more time in the nursery. Bar examinations may then be freely excused for failing to disclose what they can never, possibly, reveal, and those who contend that we are, today, faced with a problem, will be advanced one step nearer its solution.

It is not, however, my intention to continue cataloguing every item which is not, properly, a function of bar examinations, so that I may, at last, excuse the examiners from any responsibilities whatsoever. I indicated, earlier, my belief that some confusion exists as to how modern examinations do function, all questions of scope to one side. There are signs that this confusion is shared by the examiners themselves. We in New York have probably had the greatest amount of experience, in volume, at least. Imbedded in it there have been sundry jolts and unpleasant surprises, not conducive to our self-esteem, but compelling in the reaching of certain conclusions. In stating them, however, I presume I should say that, except for statistical material, I speak for myself alone. I feel sure that my colleagues, in the language of the high contracting powers, agree with me in principle, but I deny to neither of them the Whig right of revolution.

First of all, what is an "examination?" Most of us fall back on personal recollection—perhaps of a June day at high school or college, if we attempt to define the word. We forget that it need not, can not, always indicate the same process under conditions different from those with which we were familiar. To us the process was one whereby we were measured, each of us, solely in relation to his individual proficiency in a certain subject. We answered questions that were exactly comparable to other tests which had been given or would thereafter be given in the same course. They formed the scale, our answers the data to be measured. Lastly came the measurer—the examiner. He introduced a personal, or subjective element into the process. You can see that a good deal depended upon the resiliency and impressionability of his mind. In the last analysis those were the tools upon which he relied to differentiate the papers, and at the same time, leave unaltered the original, prearranged scale of values. If there were ten questions, averaging ten points each, and there were 50 papers, there were, in all 5,000 possible evaluations. The examiner had to be capable of forming and recording 500 impressions out of a potential 5,000, each accurate according to the master scale. If there were 200 papers, then 2,000 out of 20,000. At what point do you think the impressionability of the examiner will begin to fail? If you think it need never falter you can easily test the proposition for yourself. We have lots of old examination papers. We will furnish you with a sufficient number to enable you to mark 500 answers a day for twenty days. Along about the twelfth day you can reintroduce some you marked the first day, conceal your original marks and remark them. I think you will find that you do not always record your earlier impressions the second time. Unless you can guarantee to do so, something, obviously, has happened to your original scale. The numbers you used to express marks are no longer absolute symbols. If the same answer you marked 5 today gets a 6 two weeks hence, it is plain that 5 and 6, as symbols, mean the same thing in respect of those two particular papers. Employed as numbers, however, 5 and 6 can never mean the same thing. If, in compiling totals, they are used as numbers they introduce errors, whereupon the validity of any fixed pass mark, expressed numerically, disappears. A comprehensive bar examination can not be reduced to less than 30 long form questions if marking is to be attempted against an absolute scale. With a class of 1,000 candidates this means that there are 300,000 distributable points and 30,000 entries to be made. For a class of 2,000—600,000 points, 60,000 entries.[2] By premise, each one of these is dependent for its accuracy upon the freshness and impressionability of the mind of an individual—the examiner. When his concentration and impressionability begin to

2. The difficulty is not overcome by increasing the number of examiners. In June, 1930, 4 examiners each marked the same 4 long form questions in 25 books, independently, against a tentatively prearranged scale. Out of 400 possible differences of opinion there were only 22 instances in which any examiner had marked an answer, 3 or 4 points higher or lower than the others. But the first examiner's marks for the 25 first answers averaged 6, the second's, 5, the others, 4½, with similar variances of averages for the other answers. The first examiner's totals ranged from 34 to 13 out of 40 points; the second's from 30 to 9, etc. Yet each of the four had ranged the 25 books *inter se* in almost exact parallel.

give out, accuracy departs from the proceeding. It is the function of a bar examination, of course, to pass men or to reject them, not to grade them, but as a practical matter, you can not do the one without doing the other. It is as much a function of any examination to spread, or differentiate, a class in terms of itself, as it is to relate any individual, or all the individuals in it, to any external standard.

There are, broadly, three different methods of grading classes—by the employment of an absolute standard, a purely subjective standard, or an objective standard. I have spoken of some of the mechanical difficulties attendant upon any attempt to employ an absolute standard where large numbers are involved. There are others. The trust companies, title companies and the tax experts have been indicating to us lately certain matters with which a mere lawyer need no longer concern himself, but it is still pretty hard to tell just what and how much factual equipment a beginner should have. The novelty of manufacturing new statutes does not seem to wear off, and the volume of reported decisions has increased 50% in twenty years—on account, one supposes, of the necessity of enunciating further refinements in the common law. No applicant can be expected to comprehend all this material, even in elemental statement, and no examination can begin to reflect it. Any search for an absolute standard whereby to measure a candidate's equipment resolves itself, therefore, into a method of sampling, and random sampling, at that.

Furthermore, the results of an examination should be consistent, not alone with themselves, but with the results of previous examinations. A truly absolute standard requires that each set of questions be as completely typical as the last set, exactly as hard, but no harder. Experience, however, teaches that it is next to impossible to prepare two examinations of exactly the same breadth and severity. Every once in a while the class unexpectedly turns out to be quite familiar with the legal principles selected for many of the questions, or some questions prove to be recondite, with the result that only half as many students get passing marks according to the scale as passed on the previous examination. It is then necessary to repudiate the last examination, or else to insist that the last class was a very good one, while this class is an exceedingly poor one. Whenever the examination turns out to be harder than it was intended to be, first rate law schools are apt to inquire why nearly all their honor men failed, whereupon they must be informed that their honor men don't know anything, and acrimony creeps into the correspondence. I am aware that another alternative might be suggested, to wit: that the examination was too hard, or too easy—in short that it, and the standard it pretended to, broke down—but the defenders of an absolute standard are prohibited from entertaining this suggestion.

Not a great deal need be said about the subjective method of examination. In theory it is not trammeled by any standard. The examiner picks up an answer book, reads it, and straightaway informs you whether or not the writer will make a good lawyer. This species of divination works very well with one book or with a dozen. But, since it relies, more than any other, on the freshness and impressionability of the examiner, it does not work at all with large quantities. Some years ago we gave it a fair trial on a review session. We had 500 books in front of us for review. We couldn't see much difference between books which, on the original reading, had obtained a flat passing mark, and those marked minus one, nor between those that were 3 points deficient and those that were 4 points deficient. At the end of a week we were trying to distinguish between the 50 odd books marked minus 9, and the next pile marked minus 10. It was clear that they were inferior to many books marked minus 7 which we had rejected, but it was not clear that they differed between themselves sufficiently to justify our saying that the final line belonged exactly between those two piles. We realized, at last, that we could not decide where the final line belonged by reference to any individual books, nor by reference to any two successive piles of books—since the piles tended inevitably to merge.

As you have perceived, I have been suggesting that one way to find out how a bar examination is functioning is to examine the examiner. This the objective method does in seeking to discount the influence of those variances which, in the last analysis, are reflections of the differing personalities and temperaments of the individual examiners.[3] In outline, its technique may be described as follows: Its chief endeavor is to compel each applicant to place himself in exact relation to all the others. It has no so-called "pass mark." It does not express, numerically, a total credit of points necessary to be gained in order to pass, because, as I have explained, to employ numbers, as symbols, for this purpose, is misleading. It is not tied to any external predetermined and rigid scale of values, though it does employ a tentative point distribution scale for the long form, but not the short form, questions. It breaks each day's examination up into sections which it appraises separately in an effort to test reasoning power, analytical ability and factual equipment independently. The results of its appraisal of the component sections of any individual paper are expressed in percentages which are convertible where numbers would not be. Thus if Mr. A's mark on the first section placed him within the first 15% of the class he gets the mark 15, regardless of the number of points he accumulated on the scale used for that section. If similarly, he obtained 15 and 30 on the second and third sections his total mark is the three averaged, which is 20. This means that Mr. A is within the best 20% of the whole class by its own showing, on the whole paper, which is what we want to know. If, however, his marks are 5 and 55, and 90 which also average 50, the examination has said that he is an average man—about in the middle. But the examination has contradicted itself, for one part has said he is one of the

3. The objective method to function properly must meet substantially the following tests: In March, 1930, there were 150 "Yes-No" questions and 5 essay type (Adjective Law). First triers, second and subsequent triers averaged 108, 105, and 103 right answers, respectively, and 24, 22, and 20 points credit on the essay questions. In March, 1928, if the averaged marks of first triers (whole examination) are taken as standard, second triers averaged 6 points below, and third and subsequent triers 9 points below. Comparison with law school grades: In June, 1929, 28 men from a graduate law school were ranged in order of excellence, according to examination grades and school grades. The first three on the law school list were among the first 5 on the examination list; the five failing the examination had been ranked by the school, 16th or worse. Out of 575 men from an undergraduate law school the examination passed all at the top of the school list; failed 9/10ths of those at the bottom and ranged the intermediate groups, in order, as 82, 55, and 28 per cent successful.

best men in the class, and another part, one of the worst. In such case his paper needs reviewing, and gets it, for an average of 50 on those figures is not reliable, whereas an average of 50 made up of three individual fifties is reliable and needs no review. We call the former case a "variance." The success and reliability of each examination depends upon the number of variances it produces. The employment of percentage values, furthermore, has one special advantage. The effect of differences in the severity of questions disappears. It is just as possible to spread a class with a set of easy questions as with a set of difficult ones.

In view of the foregoing, it may be inquired, how is the pass mark ever discovered? It is discovered in two ways, and then it is tested before it becomes final. First, there is the "feel" of the whole class. Is it, altogether, a better or a poorer class than usual? The second way is to give the June class this year, insofar as it appears to be of average quality, the same percentage pass mark that we gave earlier June classes. The strongest single piece of evidence we have is the fact that the 2,000 men now coming from the vastly diversified, but identical, schools and classrooms which send us candidates, resemble more closely the 2,000 who came thence last year, as to knowledge, legal ability and general preparedness, than they do anything else under the sun. No examination ever devised, no matter what its results could prove the contrary. It now remains to test the tentatively determined pass mark. In June, 1929, this was established as 50%. The 2,500 men involved, all of whom were first timers, were then classified according to their qualifications, and individual spreads were made for each group. Two hundred and fifty of these men had college degrees and law school degrees from graduate law schools. Making due allowance for those who passed half the examination, as well as for those who passed both parts, this group attained an average of success of 87%. Next there were 600 men who had college degrees, but who had graduated from undergraduate law schools. They were 58% successful. Now we come to the bulk of the class—1,600 men who had undergraduate law school degrees, but no college degree. They were 52% successful. Lastly, there were 50 men, a few of whom had college degrees, and a few of whom had never been either to college or law school. Many of them had been to law school for a short time but not one of them had a law school degree. They were the most poorly equipped men in the class, and they were 18% successful. Eight of them undertook to get their legal training wholly by clerkship, and of the eight one passed half the examination. The other seven failed completely, although four of the seven took special cramming courses. These results sprang from a single pass mark after it had been uniformally applied, without knowledge of the identity or classification of any of the papers examined.

Thus tested it appears that the pass mark had to be just about what it was. I, for one, should hate to have to defend an examination on the sole authority of which any substantial portion of a group of 250 men, who had conscientiously and successfully prepared themselves at the greatest schools of learning this country provides, were declared unfit to practice law. On the other hand, when 600 men apply, whose qualifications are nearly as fine, each of whom has two degrees, and fully two-fifths of them fail, they have not been let off easily by any careless or perfunctory test. Finally, if from the most poorly prepared group, not one in five succeeds in getting himself certified, it begins to look as though the standard established was consistent with itself and ought not to be interfered with on account of any preconceptions.

These tests refer only to an individual examination. It is necessary, also, at the end of the year, to inspect the entire machine on the basis of all of the year's data. For this purpose a running table is kept wherein all applicants are classified and subdivided into 33 divisions according to their qualifications. The percentage passing in each subdivision at each examination is recorded. If the objective theory is correct and the examination is functioning properly, individual groups should not be able to change their rating materially from year to year. I am glad to say that they never do, nor do individual law schools change their rank with frequency, so as to be now on the top, next year at the bottom, and thereafter somewhere else on this list. They would be bound to do so if the pass mark was genuinely arbitrary, or the grading inaccurate.[4]

At the beginning of this paper, I ventured to suggest, that, in any discussion of bar examinations, the questions of how they function and what their function is should be distinguished. The profession today shows a tendency to relate the latter question to a growing concern over volume, aware that this factor, more than any other, threatens to deprofessionalize the bar. The profession shows equal concern over the intellectual and ethical qualifications of a large portion of those admitted to practice. These are, indeed, serious problems, but their complete solution does not lie in better or different final examinations. Examinations can not and ought not to be relied upon to control volume or ethics. They can be developed so as to furnish a fair and accurate test, and, by the objective method, to do so, even where very large classes are involved. Experience in New York indicates that, if the ability of the graduate law school students is taken as a standard, by which to pass 80% or 90% of them, the same standard can be met by about 55% of the whole number of applicants. At present, the one figure cannot be interfered with without interfering with the other. Looked at realistically, what examinations actually do is to act as an informal equalizer of law school standards, assuring admission to the best qualified men promptly, and forcing the more poorly equipped to prepare themselves for a year or two longer. The failures try, on the average, four times, and, though before they pass, they must meet the standard set by the best men in the class, they eventually pass. During 1922-3-4 3700 new applicants applied in New York. It may seem to you that, in so large a group, some portion must be

4. Short form ("Yes-No") questions spread the class well. Out of 150 given the range averages from 85 to 135 right answers—50 gradations, with the median constantly about 110 right. Fifteen different guessing systems applied to 150 questions yielded from 64 to 86 right answers which shows guessing to be useless so long as the class averages 110 right. In June, 1929, half of 2,500 candidates took a special review course. The graduate law school students taking the course raised their average of success from 73% to 90%; the undergraduate law school students from 50% to 60%, and those without law school degrees from 16% to 20%, which indicates that cramming does not insure success.

natively unfitted to practice law—perhaps 10 or 20 per cent. This may be so, but it does not follow that they are incapable of passing an examination, which, after all, is not the same thing as practicing law. As for the 3700 applicants, all but 165 of them succeeded in passing some time ago, and of the 165 more than half desisted after the second attempt, for reasons, one must suppose, not wholly connected with the examination. The examination alone, therefore, has thus far proved an unsurmountable obstacle for only 74 men, which is exactly 2% of the whole number. Of course, it may be that 74 men out of 3700 represents a true appraisal of the proportion of them natively unfitted to practice law, but a cataract of criticism from the metropolis, and elsewhere, voices no such belief.

Whether such criticism be just is, certainly, the first question to be decided, and it can only be decided by dispassionate investigation and earnest counsel. If it be just, efforts to meet the problem of volume will require, first, some method of making uniform throughout the country, educational requirements, examination standards, and the basic concepts involved. Aptitude tests and character questionnaires, the admirable start made in Pennsylvania, should be further developed, and the considerable number for whom the law is a mistake should be sorted out and dissuaded as early as possible. There should be constant cooperation between the colleges, the law schools and the bar examining boards, under the auspices of the Bar Associations, in an effort to construct a machine strong enough to handle the whole problem, which it is vain to expect final examinations and splendidly unselfish character committees to cope with alone. The theory of volume in its economic, professional and political aspects should be threshed out by the educators and leaders of the Bar, in the Associations, with the good of the Public in view. Above all, I plead for assumption of responsibility by the Associations, under the leadership, I hope, of this great organization.

After all, upon the larger stage the chief role must be reserved for the Associations. It is they who must engender the contacts so vitally necessary and today more than often, lacking. At present, our attitude, too generally, implants in the students and in the younger city bar, at least, a definite feeling of inferiority. In practice, we hold ourselves too much aloof from their problems, their point of view—indeed from their whole cosmos, and seem to consider ourselves what some have boasted that we are—the elite of the Bar. If we are such, it is plain, of late years, that we have been unequal to our task, and that the sovereign remedies of precept and example have failed us. The result has been that the attitude of the younger men and the disaffected portion of the whole profession has tended to become a frozen and detached attitude. An independent ethic develops, conditioned by their own narrowed horizon and the economic stress of troubles which they can not solve alone, an attitude competitive and commercial, in the midst of which it is not strange that abstract ideals wither. Some help will come when the schools spend more time on the history, the traditions and the philosophy of our guild, as well as on the political philosophy of our country and when they vitalize the Canons of Ethics by emphasis on group concepts. In the end, however, substantial progress can not be hoped for until the whole profession has attained more self-awareness and group consciousness, and, has accepted, courageously, the duties and responsibilities toward itself, as well as toward the public, which its pretensions imply. To that end, it must fashion some machinery which will make possible a higher degree of organization than it now possesses.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912

Of American Bar Association Journal published monthly at Chicago, Illinois, for October 1st, 1930
State of Illinois } ss.
County of Cook }

Before me, a notary public in and for the State and county aforesaid, personally appeared Joseph R. Taylor, who, having been duly sworn according to law, deposes and says that he is the Business Manager of the American Bar Association Journal and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management, etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 411, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are;

Publisher, American Bar Association, William P. MacCracken, Jr., secretary, 1140 N. Dearborn St., Chicago.

Editor-in-Chief Edgar B. Tolman, 30 N. LaSalle St., Chicago.

Managing Editor, Joseph R. Taylor, 1140 N. Dearborn St., Chicago.

Business Manager, Joseph R. Taylor, 1140 N. Dearborn St., Chicago.

2. That the owner is: American Bar Association, Josiah Marvel, President, DuPont Building, Wilmington, Del.; William P. MacCracken, Jr., Secretary, 1140 N. Dearborn St., Chicago, Ill.; John H. Voorhees, Treasurer, Bailey Glidden Building, Sioux Falls, South Dakota.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: There are none.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

JOSEPH R. TAYLOR,
Business Manager.

Sworn to and subscribed before me this 24th day of September, 1930.
[Seal.] MARY A. KING.
(My commission expires March 8, 1931.)

CURRENT LEGAL LITERATURE

A Department Devoted to Recent Books in Law and Neighboring Fields and to Brief Mention of Interesting and Significant Contributions Appearing in the Current Legal Periodicals

Among Recent Books

"*MAGNA CARTA; a Pageant Drama,*" by *Thomas Wood Stevens,* published by The American Bar Association, 1930, with introductory notes by Roscoe Pound, and appendices giving an English Translation of the Charter, and notes on costuming, literature, etc.—The presentation in 1928 at Seattle of this little Pageant Drama portraying the most important episode in the legal history of our English Fountain of Law, the sealing of Magna Carta by King John, was an event of surpassing interest. The American Bar Association had never experienced anything of the kind, and the artistic spectacle was received with great acclaim.

Mr. Stevens, for many years well-known to Chicagoans as the Director of the Goodman Theatre, has wrought with genuine dramatic craftsmanship, fine literary quality and scholarly research, a plausible picture of this significant historical event of seven hundred years ago. Its value to law-scoffing laymen of today is even greater than to the better informed English-speaking bar. It suggests the desirability of frequent reproduction by Colleges, Law Schools, and High Schools throughout the land. It is vivid enough from an educational and dramatic point of view to call for a short movie-tone in color. Its effect on the present-day mind can hardly be over-estimated.

The play is in four Episodes. The first is a strong picture of the tyranny of King John, manifested first through the Sheriff and then by the King direct. A case properly brought before the Seneschal, is being heard by the "Hundred Court," and is about to be settled. The Sheriff and his retinue appear. He scents the chance for perquisites, both for himself and the King, and asserts jurisdiction and forces a trial in the form of an ordeal by water for the unfortunate plaintiff. The man's innocence is indicated—but he is by accident drowned. Then comes the King, who takes over the Court of the Sheriff and completes the ruin of the unfortunate litigant's household. Follows then an instance of the King's personal tyranny in applying the torture of a cope of lead to the Archdeacon of Norwich, who alone had refused to obey the Royal Interdict against the King's excommunication by the Church. The Episode is intended to illustrate comprehensibly numerous protested oppressions by the King which are afterwards specifically forbidden by the Great Charter.

The Second Episode, in a chapel of the Knights Templar near Dover, deals with the King at bay, yielding to the demands of the Pope, and doing homage to the Papal Legate who directs that only the Archbishop of Canterbury shall absolve him. He must kneel to him.

The Third Episode is at the Church at Bury St., Edmunds, and reveals the Archbishop of Canterbury swearing the Barons to resist the King under the coronation charter of Henry I, until a similar grant of liberties be made under the present royal seal:

"Ye have come, and ye have banded as brothers, because beneath John's hand all England is shaken, and there is no just law, and government is fallen to the King's greed. And these things you would change. . . . Demand of the King under his seal . . . a solemn charter of our liberties!"

And the oath is most impressively taken.

The Fourth and concluding Episode is at Runnymede, and in the presence of Barons, Bishops, Burghers of London and many others, the King is forced to seal the Great Charter. Certain chapters from the Charter are repeated verbatim, and there is vividly portrayed the various reactions of the King and many present, presenting to modern audiences the contemporary view of the great issues of that day. Finally and impressively King John touches with his right hand the parchment that contains the seed of all that is most precious in our modern bills of rights:

"Given under Our hand, these and many men being witnesses, on the fifteenth day of June in the Seventeenth of our reign, in the meadow which is called Runnymede."

The curtains close as the Great Seal closes on the wax, and from the churchmen come the first notes of Te Deum Laudamus.

The world may well take heed, and should grasp the opportunity thus given to read and reproduce this dignified, sustained, penetrating and intense little drama. It may be simply done with care and good effect by amateurs, and frequency of repetition would go far to lift the fog that envelops much of modern understanding as to the vital connection between liberty and law.

Chicago. GEORGE PACKARD.

Town Government in Massachusetts, by John Fairfield Sly. 1930. Cambridge: Harvard University Press. Pp. viii, 234.—Town Government seems indigenous to Massachusetts. Mr. Sly's account of its functioning there from 1630 to 1930 leaves little to be desired.

As an "unofficial observer" at Plymouth town meetings the reviewer may comment on the opening sentence of the book: "Plymouth is a symbol of na-

tional origins and the voyage of the Mayflower an American epic."

To this day, town meetings occur in Plymouth and in other New England towns by reason of a "warrant," wherein and whereby the voters of the town are not only called together, but are informed of the town matters which will require their attention. These matters are set forth in a number of "articles"; and the articles, with a close approximation to legal pleading, are fitted to the subjects about which the townspeople are expected to debate and upon which, if so advised, they are to act.

The "town meetings" which the writer had the privilege of attending bear out DeTocqueville's suggestion that without community institutions a nation can secure for itself a free government, but it has not the spirit of liberty. In these town meetings a free government is assumed; and the spirit of liberty is exemplified. One of the discussions—in the 1860s—concerned a town license to operate billiard tables. There was at that date considerable prejudice against billiard tables. Mr. Lanman (a town citizen known as "Crabby") rose and briefly outlined the thought that billiard tables were fraught with danger to the youth of the community. He called them Pedilliard tables and he said that if the town was going to license these tables he thought the license fee should be predicated upon the profit therefrom to be derived by the proprietor of the tables. Just what disposition was made of the matter the record does not disclose; but the incident is significant in this, that whether a citizen knew anything about the subject in hand or not, he was at liberty to state his views; and he was assured of an audience.

Passing to the town meeting of today (pps. 126-130 of the book) we learn that "The warrant remains a vital part of town government." It is addressed to the constables of the town; and in the name of the Commonwealth of Massachusetts they are directed to "notify and warn" the inhabitants of the town "qualified to vote in elections and in town affairs, to meet," etc. We note that at a town meeting to be held in the town of Millville in the county of Worcester on Monday, February 4, 1924, at 9 o'clock in the forenoon, the attention of the voters is directed to electing a "moderator" (in most places they call this a "chairman"), a town clerk and other officials named, and "also on the same ballot to vote 'Yes' or 'No' in answer to the question 'Shall licenses be granted for the sale of certain non-intoxicating beverages in this town?'" If we in imagination carry back this question into the old saloon days, we may guess at, although we cannot fully envisage, the discussions which were rife in the 50s and 60s touching the question whether licenses to sell intoxicating beverages should be issued. One orator, whom the reviewer had the fortune to hear, made a long address on the subject of these same licenses. He held that if the town granted a license to the proprietor of a saloon to sell liquors, the town thereby became a "partner" in the business; and such partnership was of course held up to the horror and scorn of his hearers. The sentiment of this address seems preferable to the law involved.

The present mode of dividing the town meeting into two parts (p. 131), one to choose officers and another to transact business,—maybe a necessary device for expediting the affairs of the town, but it is a distinct departure from precedent. And "precinct voting" seems to cut deep into the traditions of town meetings; for their basis was the assembling of those "qualified to vote in elections and in town affairs to meet," etc., and this contemplated the entire town group; not half a dozen smaller groups gathering at sundry places.

We must here in Chicago dismiss the town meeting as a practical method of settling local affairs. Who would think of calling a meeting of the Town of Lake? In Winnetka they still hold, or at least have recently held, a sort of denatured "town meeting." What they discuss, resolve and do has of course no legal significance whatever. They merely borrow from New England a designation which wears a halo; but their gathering has no meaning except a sentimental adumbration of the past. In communities of the size of Winnetka they still hold town meetings "down east"; and they determine what they will do or refrain from doing with reference to town affairs. But the whole proceeding on the soil of Illinois is an exotic. This we may regret; but cannot help.

We are thus brought (p. 219) to Mr. Sly's thought: "The real value of the local institutional history of Massachusetts lies in the fact that rarely has there been such an opportunity to see the social process so completely." We can see it, admire it, but, in any real sense, can we use it?

Chicago. RUSSELL WHITMAN.

Executive Agents in American Foreign Relations. By Henry Merritt Wriston. 1929. Baltimore: The Johns Hopkins Press. Pp. 874. The present volume treats of a neglected aspect of American diplomacy. It depicts an important phase in the conflict for real sovereignty under the divided power which the fathers of the constitution endeavored to perpetuate. As in other tests of power the victory has rested chiefly with the president, subject to various exceptions. Executive agents represent the president exclusively and not at all the senate. They are extra-constitutional, yet their employment has been coeval with our government and gives every sign of future permanence. Their number has been so considerable, their missions so diverse, the attendant circumstances so dissimilar, that they naturally call for some sort of classification.

Under the caption, "origin and constitutional position," the author develops in four chapters what might be termed the "test of the prerogative." He introduces illustrations of the practice prior to 1789; he develops a background of constitutional theory for the institution; he attempts to define the position of the agents personally; and he groups the opinions from time to time expressed in Congress relative to the evolution of the system.

In this preliminary section the author draws his material and citations from varied sources, and elaborates an interesting constitutional philosophy. This section should, indeed, be of special interest to the student of constitutional development. A conclusion is reached that the executive agent is now definitely intrenched in our governmental procedure, and that no serious attempt is likely to be made towards his elimination. "There may again be discussion," says the author, "but there will never again be the same basis for discussion that there was in 1831, or even in 1893. The important phase of congressional debate on the topic appears to have been closed."

Similarly, at the conclusion of the entire work, the author observes, "The whole forms an interesting illustration of the adaptability of American constitutional

practice to meet the changing situations of a growing nation."

The second and larger section of the treatise develops, with a wealth of illustration, the "range of practice" of the system as it has operated. Agents are classified accordingly as they are sent to open up relations, to renew those which have been broken off, to treat with states and governments not recognized officially, to treat with viceregal jurisdictions too important or too elusive for negotiation with the metropolis alone, to represent the United States at international conferences, and to make known our position in countries where no regular diplomatic officers are maintained. A concluding chapter, entitled "agencies growing out of the nature of the business," is somewhat of a euphemism for the old-fashioned concept of a service of espionage abroad. It is supplemented by a discussion of technical experts, ceremonial agents, propagandists, assistants to official agents, and investigators.

Among the interesting illustrations here recorded is the English mission of Thurlow Weed, in the midst of our civil war. There is a rather sustained discussion, also, of the Grant administration and its policy toward Santo Domingo. Very striking, too, is the statement that it was not Sumner alone who was interested in taking over Canada, but that Fish himself discussed the subject with Sir Edward Thornton (p. 739).

The author is satisfied, apparently, when he has demonstrated that his illustrations fit the major theme. Once that is proved he turns immediately to some other illustration. The result is a "catalogue of ships" rather than a narrative. The reader is constantly stimulated by fresh evidence regarding something partly known already, or by leads that he would gladly follow further. He is exasperated, on the other hand, to find few illustrations carried through to a conclusion.

In short, the work is a compendium, a manual for reference on a phase of constitutional development. Only the very hardy reader will go through it systematically. But he who does will be rewarded.

LOUIS MARTIN SEARS.

Purdue University.

The Administration of Justice from Homer to Aristotle, by Robert J. Bonner and Gertrude Smith. Vol. I. 1930. Chicago: University of Chicago Press. Pp. viii, 378. This fine work by the professor and associate professor of Greek, University of Chicago, is the ablest, most exhaustive and most satisfactory of the many which have dealt with the subject and those cognate. Perhaps from the fact that Dr. Bonner was a member of the Bar (of Ontario—he was "called" in 1893), a more appreciative understanding is shown of the actual operation of the courts than in any other work I have seen from Phillippi down. All the original sources have been carefully examined and collated and their relative value estimated—*inter alia,* a due importance is given to Aristophanes as an authority in matters of law, substantial and adjective—an authority which more than once I have urged upon the sister profession of medicine, to be consulted in that branch of science. Writers in Greek and Latin as well as in Italian, French, German and English have been consulted and freely quoted from; not one of any importance has been overlooked. The wise practice has been adopted of giving the original language,—most of us have been exasperated at the efforts of the translator. But even one unacquainted with non-English languages will find no difficulty in understanding it. Some of the matter has already been given to the public, but we find it here reorganized, amplified and brought up to date,—in some instances clarified and illustrated.

We have a detailed discussion of the origin and development of legal tribunals and processes among the Greeks down through the times of the law-givers, Draco, Solon, Peisistratus, Cleisthenes, and others. The importance of the courts cannot be overestimated; they were constantly interfering with the government in Athens in a manner that would not be tolerated in a modern state, in which *Est judicis dicere non dare;* and, too, they were the very bulwark of democracy, at least in later days.

The ever-recurring, never-ending question of adjudication by expert or by non-expert was a live one in Athens as it was in Quebec after the Cession in 1763 when the French Canadians marvelled at their hard-headed conquerors preferring to have their rights determined by their tradesmen rather than by their judges,—or in certain States where the lay jurors are "judges of law as of fact."

It is not intended to go through and specify the contents of this very valuable and intensely interesting work. I shall only mention a few of the statements that strike the reader.

There was no crime in Homeric times, only torts, and everyone had to look out for himself,—it will be remembered that it was a tort that caused the bard *Menin aeidein.* The master might kill his slave with impunity, and even in later days the evidence of a slave would be given only under torture. Manufacture made the slave of importance in Greece as the cotton-gin of Eli Whitney did in America.

One banished for crime returning without permission might suffer death like those banished to the American colonies or Australia—witness David Copperfield's friend and benefactor. And on his trial for unlawful return he could not set up the injustice of his banishment, any more than could Gourlay at Niagara in 1816.

The Greek herald used traditional, long outworn terminology in opening court, just as our crier says "Oyez, oyez."

The inanimate slayer was cast beyond the boundaries of the State, as, until comparatively recent times, the deodand was confiscated to the Crown in England. Exemplary damages might be awarded in certain classes of torts, if not all.

It would scarcely do to introduce at Washington or Ottawa, Springfield or Toronto, the custom of Locris, by which anyone wishing to introduce a new law or change an old one had to argue the matter before the Council of One Thousand with a rope around his neck, and if he were unsuccessful he was choked to death on the spot. Demosthenes tells us that only one law was changed in two hundred years: *O si sic omnes.*

The evidentiary oath was not unknown: it was as frequently employed in Greece as later in France, and till 1792 in Detroit. Ontario lawyers will remember a reported case in which a Chinese litigant offered to abide by his antagonist's statement if he were sworn Chinese fashion.

More than two thousand years before Governor Gerry, the "Gerrymander" was known and actively utilized. What is strangely like "judicial recall" was allowed by Solon "to give the people an opportunity to protect themselves against 'crooked decisions' of the magistrates;" and Pericles inaugurated pay for jurors

"as a bid for popular favour in his contest with the wealthy Cimon."

No one of intelligence having any interest in the history of legal or political institutions will regret reading this book, and he who reads it once, will read it again with increased profit and pleasure.

WILLIAM RENWICK RIDDELL.
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A Selection of Cases and Other Readings in The Law of Nations chiefly as it is Interpreted and Applied by British and American Courts. By Edwin DeWitt Dickinson. 1929. New York: McGraw-Hill. Pp. 1125.—International law has frequently been reproached both by practicing lawyers and by many professors of law in our law schools as being preoccupied chiefly with vague and theoretical rather than with "practical" issues. In fact has it not been hinted from time to time through nice verbal innuendos and pretty little sarcasms that international law does not exist at all! A partial explanation of this is to be found in the youthfulness of the subject and in the many difficulties in the path of its proper development. But a further explanation lies in the fact that international law has been taught largely, at least until recently, by professors of political science rather than by professors of law and has therefore rather naturally been taught not by "the case method" but by the lecture and textbook method. This has led to an historical, or descriptive, or philosophical, or ethical approach to the subject rather than to a legal approach. However, a few case-books have appeared prior to Mr. Dickinson's work. To be precise these are four in number: that of Freeman Snow published in 1903, that of James Brown Scott first published in 1906 with a later edition in 1922, that of Stowell and Munro in 1916, and that of Lawrence B. Evans with first publication in 1917 with a second edition in 1922. Each of these works offered a contribution to a new emphasis on the legal side of international law, and like most other early contributions to anything evoked most valid criticisms and led to new efforts on the part of later writers.

Before examining Mr. Dickinson's book it might be well to look into the background and general qualifications of the author. The merest glance into Mr. Dickinson's life offers convincing evidence of the inquisitive mind and excellent general scholarship of the man. For the last ten years he has been professor of law in the University of Michigan Law School and during this time has been experimenting with the difficult problem of finding and selecting materials for the helpful teaching of international law in the classroom. First appearing in mimeographed form, the materials used in the later published volume underwent the important test of classroom use and received the suggestions and criticisms of many other teachers of international law to whom these "advance copies" were sent. Thus it is easy to see that the author of this new international law case book is a finished scholar, having worked in his field for years with an experimental and cautious state of mind.

Wherein does Mr. Dickinson's book depart from the beaten path of earlier case-books? As the author himself points out, there are three main departures. In the first place his case-book is more limited in scope. Satisfied that a survey of the entire field is inadvisable for an introductory course the author has omitted cases and readings dealing with the laws of war and neutrality, the rights and obligations of belligerents, and such of the relations of peace as are governed by political standards and organizations. The reviewer highly approves of this departure, though it seems easy to understand how others could prefer an attempt to give a more comprehensive survey. It may be said however that the elimination of cases on the laws of war and neutrality follows the recent trend in the teaching of the subject throughout the country. In the second place the author's selection and arrangement of cases has been pedagogic rather than systematic. He has included those cases that he felt would best be adapted to stimulate his students and lead them to a finer understanding of the subject, and has not hesitated to omit even a "leading case" if in his judgment it failed of this purpose. And as to arrangement of topics this has followed the same test, that of the most effective grasping of the subject. In the third place, the book aims to present "the Law of Nations chiefly as it is interpreted and applied by British and American Courts." This has led the author to include not only public international law, but also much private international law, some constitutional law, and such municipal law as is applied by the courts in cases affecting international relations. To the reviewer this seems an admirable realistic treatment of international law. For after all has not international law developed, at least in many of its branches, through the interpretations of municipal courts such as the United States supreme court and the English judicial committee of the privy council? And is it not also true that much of international law has been built up through analogies and adaptations from other branches of the law? Hence the value of studying international law as "law" rather than, as it were, *in vacuo*.

One of the most important merits of Mr. Dickinson's book is certainly the bringing to date of recent material and the emphasis on fundamental contemporary problems. For example, cases are included on territorial problems arising from the post-war rearrangement of boundaries. The decisions of arbitral tribunals, of mixed commissions, and of the Permanent Court of International Justice are included. Problems of nationality, of the jurisdiction of crime and the extradition of fugitives, of the protection of the interests of foreign states, are all given careful treatment. Even the intriguing law of the air here makes its international-law case-book debut. Of course it would be strange indeed if a book of eleven hundred and thirty-three pages were without technical errors, or even what some might view as errors of judgment. But surely no one can doubt that Mr. Dickinson's book is an outstanding contribution to the field of international law.

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INDIANA'S CONSTITUTION AND THE PROBLEM OF ADMISSION TO THE BAR*

(Concluded from September issue)

AFTER all is it not true that in view of the comparative ease with which a young man or woman can acquire a legal education today,—the three hundred persons examined for admission to the bar in New York last year who did not have a college education in preparation for their legal education were asked if they would have managed to get a college education had it been required, and everyone answered "yes,"—that one who wishes to practice without it shows a weakness of character, shows further an absolute dishonesty, as measured by present standards, so that we can unequivocally say that he does not have a good moral character? We have no difficulty in saying that an attorney who collects $100 belonging to his client, and appropriates it to his own use is unfit to be an attorney. But suppose he takes $100 from him upon the representation that he is learned in the law, and although ignorant on the subject, advises him as to his legal rights, whereby the client loses $10,000, is he really not more of a criminal than in the first illustration? Those of you who have had occasion to observe the workings of the carpenters, the railroad porters and the street-car conductors who have been admitted to practice law, simply because so far they had had no occasion to steal from a client and they had therefore a so-called good moral character—as a conductor but not as an attorney—know that that latter illustration is not far-fetched, but that in truth it is enacted in Indiana every week of the year.

We are concerned, as was pointed out in the *Walls* case (73 Ind. 95) with his good moral character as an attorney and not in any other capacity. Do we have to prove to anyone at this date that one who wants to represent himself to be an attorney, when he is not one in fact, is wanting in moral fibre to the extent that his mere application ought to bar his admission? That instead of practicing law such a one is practicing fraud?

And the facts prove that that is more than idle theory. I was chairman of the Committee on Grievances of the Lake County Bar Association for a year. I investigated fourteen or fifteen complaints, and not one involved an attorney who should have been admitted in the first instance; each one being very deficient in legal education.

But more important than those observations are the two or three authentic instances in which a jury has specifically decided that an applicant for admission to the bar without legal education is not a person of good moral character. What better evidence could there be than that public opinion on the question has progressed since 1852?

The conclusion must be that legislation, or court regulation, on the subject would be constitutional.

This conclusion can in truth be supported upon any one of three propositions: first, that the constitution gives a "right" to one being a voter and of good moral character, since as we have seen such a right is subject to reasonable regulation in any event, and the phrase "good moral character" is open to present day application; and on these grounds there would be permitted a requirement of legal education, either as a reasonable regulation, or as part of "good moral character." Second, that the constitution sets a minimum standard, or imposes but two conditions for admission to practice which may be added to. There is ample support for this view in the proceedings of the Constitutional Convention and in the first two cases decided, but on that point it probably must be conceded that those cases are impliedly overruled by the last two. If the proposition were to be re-examined, however, a very forceful argument could be made to sustain the proposition that the first cases were right and the last ones wrong. After all is said and done the substance of the proceedings of the convention seems to be that it intended to make "voting" and "good moral character" two preliminary conditions only; that is, if one possessed those qualifications he was then "entitled to admission," or present himself for examination. On the basis of the convention proceedings a court could very reasonably take that view. On the other hand one may take the third interpretation, that is, that the constitution sets a maximum standard, and reach the same result. One may say quite categorically today that one who wishes to attempt to practice law without requisite knowledge and training has not a good moral character. It is after all a question of common honesty upon which reasonable men cannot differ.

There remains to be considered briefly the facts and the policy assumed against the proposed change. Those opposed to it say that we have got along for one hundred years or more without it, why change? And the short answer to that is that it isn't so. We have not got along without it. Our law has been administered during all those years, in so far as it has been properly, or approximately so administered, by men who through self-education and legal education in easier doses have been learned in the law. Legal education since 1816 has in fact at every instance been a condition precedent to every success on the bench or at the bar. You can as well have an airplane without an engine and wings, as you can have a real lawyer or judge without a wide and deep knowledge of the law. You can as well eat chicken without having it, as you can *practice* law without knowing any law.

It is true that we have put up with many miserable failures on the bench and at the bar, and to the point that we have become so calloused that in some quarters at least we have a fatalistic inhibition as a result. Our environment seems to some to have so strong a hold on our characters that we believe it futile to attempt to rise above it. We cannot expect progress from that class, any more

*Address of Mr. Bernard C. Gavit before Annual Meeting of Indiana Bar Association. As the October issue was devoted exclusively to the American Bar Association's Annual Meeting, it was impossible to conclude it in that number. The first and main installment of the address was printed in the September issue.

than we can expect the peasantry of China to set up a new order of things there. But we can expect that this group shall say that we are through with the injustice which results from the old system, and that this group shall take the lead in making legal education not only the insurer of success at the bar, but make it a prerequisite for admission.

And have we not already answered the second argument—that legal education was unnecessary eighty years ago, when the constitution was adopted, therefore it is unnecessary now? Again, it was as necessary then as now. It is true that its form has changed. Then it was obtained in a law office, and in the practice; now for the most part is it obtained in law schools and the practice. Then law schools were few and far between, for the most part inaccessible, and on the whole offered little real advantage over office study. Then the body of the law was slight and simple as compared to its present proportions and complexities. Then lawyers and judges were dealing with law in frontier civilization. Times have changed, and with it have changed the amount and content of law and the manner in which a student is to acquire knowledge of it. But the very real necessity for such a knowledge and the acquisition of the power of legal reasoning for the purpose of applying it is increasingly apparent. Eighty years ago a student learned his law primarily in the practice, and to a certain extent, at the expense of his clients. Today, the question fairly is: is there any real necessity for a young lawyer learning *all* of his law at the expense of his clients? The obvious answer is, "no." Opportunities for his education at his own expense and that of the state are so plentiful that the old system has been abandoned in all but rare instances.

Indiana is alone in its present situation and the glaring ugliness of it is graphically set out in the article by Richard Tinkham in the June issue of the Indiana Law Journal. Three of our ninety-two counties make good faith efforts to regulate admissions to the Bar! Standards of education in other states have been set higher and higher each year. Standards in law schools have had a corresponding rise. Everywhere else there has been action vitalizing the self-evident truth that a knowledge of the law is the lawyer's sole tool. Other states will not allow him to attempt to work without it.

And then it is urged that such standards would keep out the exceptional individual, too poor to secure the necessary education. If that were true it might well be said that such a case falls in that rather large class of cases where "it's just too bad." Any rule which is in any real sense a rule may seem unjust in its application to exceptional cases, but the latter must bow to the obvious general benefits which flow from the application of the rule in the 9,999 cases out of the 10,000. But the real answer again is, it isn't so! There is no exceptional individual today, however poor he may be, who cannot with comparative ease and generous assistance acquire an education. If he have the mind and the ambition which the phrase "exceptional individual" imports, his education is assured him.

This last semester there were 167 students in the Indiana University School of Law. It is estimated that at least sixty per cent of them earn at least one-half of their own expenses; that an additional fifteen or twenty per cent earn a part and from five to ten per cent all of their expenses. I, myself, have known young men who have not only worked their way through school but have helped support a widowed mother and smaller children in the family. Such an experience is not an unmixed blessing, but it can be done.

And as a last recourse a young man can get married and have his wife put him through school.

Finally it is argued that there is created a monopoly and that such a program is wrong on principle. Which, on the latter point at least, gets us up (or better, down) into the insecure realm of philosophy. But we can answer by merely restating the argument for them; it creates *another* monopoly, and is wrong on an *assumed* principle.

Both propositions involve the rule of regulation as against the principle of freedom of action; government against individualism. But certainly those who oppose it would admit the validity of some regulation (that is, they would keep out the confirmed embezzler, for example), and there remains only the extent of the application of such a concession. Which after all gets back to the question, are the present evils sufficient to call for action? How much public security must we sacrifice to individual freedom; how much of the latter to the former? Obviously different individuals and different times will give varying answers. All we can do is to measure the temper of the time, for as has been truly said, "Man acts from adequate motives relative to his interest, and not on metaphysical speculations."

Is the public misled by incompetent attorneys? Is the public here incapable of self-protection? Is there an evil to be remedied? From what has been said the answer to the first and last are self-evident. While it certainly is true that under our present situation we license an attorney; we make him an officer of the court; in all truth we make him an attorney in contemplation of law, when he may not be one in fact. We deceive the public and the public is in truth deceived. It has very little means of knowledge and can have none. As in all other cases where that disparity exists between individuals we regulate the conduct of the one in the position to impose on the other. We fully regulate the licensing of all other professions and businesses where the individual represents himself to be possessed of special knowledge or ability.

It seems too plain for words that if individualism clings to admission to the legal profession as its last foothold, the loneliness of the position alone disproves its validity. Is there not the same evil present which prompts (with almost universal approval) regulation of doctors, dentists, pharmacists, teachers, and every other profession?

The uniqueness of our position carries with it a sting of reproach, not only to ourselves, but to all of the people of the state. But it stings deeper this body than any other. We *should* be the leaders in correcting the evil, and as a result are we not accessories to the misrepresentations and the failures of justice, which result from the present situation? We concede that we are leaders: but we fail to lead. If this association has any real sense of its obligations to itself and the people of the State of Indiana it will pledge itself to devote all of its energies to the passage of this act.

CONFERENCE OF BAR ASSOCIATION DELEGATES HOLDS SUCCESSFUL MEETING

Full Discussion of Report of the Conference Committee on Bar Reorganization, Which Was Concurred in by Committees of the Executive Committee and the General Council, Results in Recommendation That Executive Committee Take Steps to Advance Project—Importance of Local Associations Stressed — Debate on Compensation System for Motor Accidents—Rule-Making and Judicial Councils—State Bar Organization — Cooperation Between Press and Bar, Etc.

By Hebrert Harley
Secretary of Conference of Bar Association Delegates

THE meeting of the Conference of Bar Association Delegates held August 18, 1930, was probably the most important and successful of the fifteen annual meetings. It was presided over by Chairman Thomas C. Ridgway. The forenoon session was devoted to consideration of the report submitted by the Committee on Bar Reorganization. An attempt will be made to give in a very condensed form the substance of the several valuable addresses on this subject.

The afternoon session began with a debate on the subject of compulsory compensation for motor vehicle accidents. The affirmative was taken by Mr. Fred M. Wilcox, Chairman of the Industrial Commission of Wisconsin, and the negative by Mr. Austin J. Lilly, General Counsel for the Maryland Casualty Company. Their addresses are published in full at the conclusion of this report. The reports of committees consumed the remainder of the afternoon session.

In the evening the Conference gave a dinner, in conjunction with the American Judicature Society. Addresses were made by Dean Leon Green, of Northwestern University Law School, on Recent Steps in Law Administration, and by President Charles M. Beardsley of the California State Bar, whose subject was Lay Encroachments. Mention should be made especially of a humorous address made after the dinner by Mr. Harvey T. Harrison, of Little Rock, who made his audience deeply his debtor for a half hour of scintillating wit.

The newly elected officers of the Conference are: Chairman, Harry S. Knight of Pennsylvania; Vice-Chairman, Philip J. Wickser of New York; Secretary, Herbert Harley; Members of the Council: J. R. Keaton of Oklahoma, to succeed Mr. Wickser; Royal A. Stone of Minnesota and Oscar C. Hull of Michigan to succeed, respectively, Guy A. Thompson of Missouri and Joseph J. Webb of California.

The informal luncheon of the Conference unexpectedly afforded a treat through the impromptu response of Colonel John H. Wigmore to Chairman Ridgway's invitation. Colonel Wigmore explained why it was that the American Bar Association had so signally failed to impress upon Congress the need for rule-making power in the Supreme Court to enable it to establish procedure uniform throughout the federal trial courts. For about seventeen years the American Bar Association has pressed its bills and has never been able to get a vote on the floor of the Senate due to the operation of "senatorial courtesy," which in substance means that any one senator is permitted to block any measure which he opposes. This virtual veto on senate action by every individual senator is to be ascribed to the fact that the constitution requires a two-thirds majority for the confirmation of every treaty. A number of treaties of a routine kind, of which the public never hears any mention, are submitted for the "advice and consent" of the Senate every year. The overwhelming majority which the constitution requires for confirmation makes it easy for the senators to maintain a virtual cabal for blocking executive power if deemed necessary in order to protect members' demands for patronage in their states. On the one side it obliges the president to comply with demands respecting petty political plums; on the other it gives to every senator power to prevent action on any measure obnoxious to himself, and in particular it enables one senator to balk a project of the American Bar Association of the highest potential public usefulness.

There was presented to the Conference by Colonel Wigmore, before the noon adjournment, information concerning the International Congress of Comparative Law to be held at The Hague in 1932, and the following resolution was adopted.

WHEREAS, the International Academy of Comparative Law, composed of members elected from all civilized countries of the world, is now preparing plans for calling an International Congress of Comparative Law in 1932, at the Hague; the Congress to be composed of delegates from all organizations interested in the practice and progress of civil and commercial law; and

WHEREAS, it is important that the legal profession of the United States be well represented in the deliberations of this Congress; therefore,

RESOLVED, that this Conference approves the project of calling such a Congress; and

RESOLVED, that the Chairman be requested to appoint a committee to open correspondence with the officers of the International Academy, to keep informed of the plans for the Congress, and to advise the several State Bar Associations thereof, with a view to the appointment of delegates to the Congress at the appropriate time.

Bar Co-ordination Discussed

It will be recalled that the Conference of Delegates, at its 1929 meeting, created a committee on Bar Reorganization. This was prompted by the address of Chairman James Grafton Rogers in which he explained the methods by which other professions had gained in-

tegration and power. A day or two later the General Council and the Executive Committee of the American Bar Association created like committees.

In this connection it is well to hark back to the resolution of the Executive Committee adopted in 1916 which called the Conference of Bar Associations into being and gave the Conference a definite field of activity. The resolution reads:

RESOLVED, that the secretary be and is hereby authorized and directed to extend a request on behalf of the Committee to each of the state and local bar associations in the United States to appoint a delegate to attend a conference of such delegates and representatives of the American Bar Association to be held at Chicago, Illinois, at the time of the next annual meeting of this Association, with the view to determining what, if any, steps may be expediently taken to bring about closer relationship, official or otherwise, between such other associations and the American Bar Association.

There was a collaboration in 1922-3 between the Conference and a committee created by the Executive Committee which resulted in an ineffectual effort to take a short step toward coordinating the American Bar Association and the state associations.

The committees named after the 1929 meeting were composed as follows: Conference Committee, Philip J. Wickser, chairman; Harry S. Knight, J. Weston Allen, James Grafton Rogers and D. A. Simmons. General Council Committee, E. A. Armstrong, chairman; Harry S. Knight, John A. Elden, E. H. Cabaniss, John H. Kane, W. H. H. Piatt, H. Glenn Kinsley. Executive Committee's Committee, Jefferson P. Chandler, chairman; Burt W. Henry, John A. Elden, Arthur E. Sutherland and Walter P. Armstrong.

All three committees concurred in the belief that the present need was for securing information regarding needs and possibilities rather than formulating a concrete plan for union. The report drafted by the committee of the Conference and concurred in by the other two committees therefore dealt only briefly with the need for consolidating the latent powers of the legal profession and recommending that the Executive Committee advance the project by appointing a special committee:

(a) to ascertain from other state bar associations, state bar association executives, and bar leaders in the several states, their attitude towards some form of affiliation between the state and American Bar Associations so that the American Bar Association may become a means of more accurately expressing the sentiment of the lawyers of the country; (b) to evolve a plan that will affiliate the state bars in whatever form organized with the American Bar Association so that the American Bar Association may become the means of more accurately expressing the sentiment of the lawyers of the country; that the report of the findings and recommendations of this special committee be made to the Executive Committee, if possible, at its meeting in January, 1931, and that the Executive Committee, upon consideration thereof, formulate and report to the American Bar Association, if possible, at its 1931 meeting, a plan to effectuate the purposes herein suggested.

Chairman Wickser prefaced the discussion of his committee report with a brief statement concerning the year's investigations. The committee found a growing sentiment on the part of the bar for a better form of organization. One of the striking evidences of this sentiment was found in the rapid increase in bar associations, which has reached the number of 1230, including state associations.[1]

In reference to today's meeting, the committee feels very keenly that however general its statements may be or however broad its pre-conceived notions, nevertheless, the primary thing that is needed at this time is the stimulation of thought and activity and discussion on this subject. It was therefore decided to have an entirely open forum, and to earnestly request the members present to express their views upon any angle of the subject which occurs to them as being important.

It is furthermore hoped that the members present will carry back to their local association with them the feeling of the importance and significance of this question. We are not going to have a better organized bar until the sentiment is pretty generally aroused throughout the nation that we should have such. That will require a great deal of thought and activity and some work on the part of the American Bar Association and the State Associations. One of the objects of this Conference is to try to stimulate just that.

Mr. Wickser also referred to an historical and statistical survey of the bar association movement prepared by him and available in the form of a reprint.[2]

Local Associations Necessary

Justice Royal A. Stone of the Minnesota Supreme Court was the first speaker on the motion to adopt the report. He said that he had observed popular approval of the climax in a recent play where one of the characters was made to say, "If I had a son preparing to be a lawyer, I would kill him."

That started me thinking and investigating. I put my judgment last spring into this sentence and gave it publication: "No profession is put on a lower plane in the lay mind than our own." That is not my judgment. I am telling you that in my opinion it is the judgment of the laity generally throughout the country. Now, isn't this a result? This long continued criticism is being capitalized by the agencies seeking to usurp our functions. One sees the advertisement of a bank or trust company displaying the names of its directors and carrying this question: "Wouldn't you prefer to have your estate managed by these men rather than by a mere lawyer?"

I have come to believe that the lay attitude toward us has been capitalized by those who are very willing to take over as much of our business as they can. You may disagree with me but the fact remains that we are losing business, losing it very generally, have lost a great deal everywhere. What are we going to do about it? I submit that the answer, great as the American Bar Association has been and is, splendid as are our state bar associations (some of them more so than others), I submit that the answer is in *intensive, efficient, local bar organization.*

The same man who put into the mouth of one of his characters that famous, much quoted statement, "The first thing we do, let's kill all the lawyers," put into the mouth of another character this admonition, "Do as adversaries do in law; strive mightily, but eat and drink as friends." Let us continue at least to eat as friends, and let us begin to strive mightily in our own behalf.

Never has it been done in America before. No profession has had as much class conscience as the bar. Let us develop now some class consciousness. Let us get away from the fact that we have certain rights, remembering always that the monopoly that we enjoy is protected and is given to us in order that we may serve the people; but let us, through organization, develop a form of service that will put our profession upon a plane so high that no other agencies can equal it.

It is a matter of simple self-interest I am advocating; a matter of dollars and cents, if you wish; a matter of professional place. Consider it from any angle, I think the answer must come again with more emphasis that the bar of the United States owes it to itself to organize, and organize intensively and efficiently; and especially to pay great attention, put great stress upon the matter of local organizations all over the land, everywhere a 100 per cent local, efficient bar organization.

Strong State Associations Are Essential

Mr. Robert H. Jackson of Jamestown, New York, was introduced as one of the leaders in the organization of Federations of Bar Associations in the State of New York. Mr. Jackson spoke of great problems confronting the bar which are certain to become more perplexing in the near future. We have now twice as many lawyers in proportion to population as Canada. In England and Wales, counting both barristers and

1. The quotations, in smaller type, are necessarily shorter than the stenographic report. The Secretary has tried to present substantially the words, and preserve the idiom, of the various speakers.

2. Obtainable from the author and from the American Bar Association Secretary.

solicitors, there is one lawyer to 2111 potential clients. In our country there is one lawyer to 862 clients. In the State of New York there were in 1919, 800 applications for admission to the bar. Nine years later there were over 3000 applications, an increase averaging 40 per cent a year. There are said to be 20,000 lawyers in New York City at this time and over 9,000 students preparing for the examinations.

Now it is very apparent that it is going to introduce into the bar what already is somewhat present, an intense struggle for economic independence; an intense struggle and competition for the business that is available in the community. Competition may be the life of business, but it certainly is the death of ethics in a profession like ours.

Now if that were the only development that were taking place, you might expect that conditions would keep pace with the profession, but, as Judge Stone has pointed out, at the same time that this enormous increase in the number of lawyers is taking place there is constant restriction of the field in which the lawyer can exercise his professional talent. I do not need to go into detail, because you are all familiar with it in your own communities. The lay collection agency is collecting the accounts that used to be quite a useful thing to the young fellow. Then we have the matter of title insurance. Not so many years ago the young lawyer could rely upon the other young man who was getting married and buying a home to consult him about the title. But of course that has passed now largely into the title insurance and abstract companies. I do not need to dwell upon the subject of the trust company and the amount of business which it has taken from the legal profession.

The discouraging thing from the point of view of the lawyer is that they are doing it to the entire satisfaction of their clients, that they are doing it in some instances better than the bar. The whole field of insurance is tending, if not to eliminate legal business, at least to concentrate it in a few hands, to concentrate it, so that the young man who comes to the bar may find that his father-in-law, or his father, who has a little accident is being defended by some other group of lawyers. The business that naturally would be his is gone through economic development. We have no means of controlling that course of events, but it certainly presents a very serious problem to the bar.

I would not want to say anything which would reflect upon the present voluntary bar associations, comprised as they are of able and earnest men. They have accomplished a wonderful work. But I think it is no reflection upon our past organization to say that forms of organization that were well adapted to the eighties and the nineties are not adapted to this present day. Within the past quarter of a century every other industry that you can name, and every profession, has consolidated its forces and improved its type of organization through merger, evolution, trade associations and other devices for which the bar has mostly furnished the mental organization talent. We have organized very successfully almost everything except ourselves.

Now this is a day of government by organized minorities, and unless the bar is prepared to take its place as an organized minority it will lose its influence in the shaping of public policy in this country. The day when a good idea was sufficient to insure some kind of effective governmental action is completely past. That is evidenced by the number of carefully thought out, splendidly prepared reports which go into these printed documents—are never thereafter acted upon.

Compare the organization which we have with the organization which you will find functioning in every state capitol on behalf of the bankers. Suppose a bill is introduced which affects vitally the lawyers—what happens? Generally *after it has passed* the bar discusses it. But suppose it affects the bankers. Every banker in every remote hamlet receives a notice to *at once* do something with his representative about it, *and he does it.* That is where he differs from the local lawyer. We have practically no effective representation in matters which concern ourselves. Nine out of ten of our efforts in these bar associations are put forth to do something which is of more benefit to the clients of the country than it is to ourselves. Now certainly we need some type of organization which will pick up the scattered rays of influence and focus them on the subject which from time to time are of importance to us.

I agree entirely with Judge Stone that the vital part of bar organization is the local bar association. It cannot be duplicated, and it cannot be dispensed with; and the base of the pyramid must be the local bar association. One of the difficulties with our state and national associations is that a lot of right minded and earnest men get together and attempt to do a great many things, and in their own communities men are remaining at home and doing the things which, in the minds of the public, cancel all of their influence.

But the local bar associations are very helpless alone. The local bar associations comprise, of course, the greatest number of men. The American Bar Association and the state bar associations do not have the number of members in the community that the local association has. But the local association is so local and its problems so general that it cannot solve them alone. What can a local association do with the problem of discipline? You know as well as I do it is pretty difficult to deal with the man who overreaches, the man who lives close by, and his family knows your family. What can it do with a trust company?

How many of you would last more than three months if you started out against your trust companies? We are too local, if we leave our local associations scattered about. Yet we cannot dispense with a local bar association any more than a church could function without a local parish.

Probably the state is the unit for most effective action. If the local associations—the influence which they contain but do not exercise—if that influence can be gathered up and focused in the state association, that probably is the point where under our present form of government it can be most effectively exerted.

But then, certainly, in the nation we need a type of organization which will bring all of those forces together and bring to us the experience which men are having in other parts of the country where they are meeting similar problems. It seems to me that we are in the situation where we have plenty of influence and plenty of standing at the bar, so that if we can just make it effective through proper organization the bar can maintain its leadership.

I realize all that Judge Stone has said. I know that we are referred to most uncomplimentarily by most of those who comment upon us. But a short time ago in the East a man addressing a graduating class, a man of great public eminence, referred to the profession of the law as a racket; and a magazine editor not long ago compared the legal profession to street walkers in a way not intended to be discreditable to street walkers. That was apropos of the ambulance chasing investigation in the city of New York. But we know that a large part of the public regards the collective profession with intense suspicion. I think we differ from the bankers chiefly in this: the average man has profound respect for the bankers as a profession, and as a group he believes that they must be honest to hold their position, but he knows one or two that he thinks ought to be watched. He has exactly the opposite view point of the bar. He feels that the profession as a whole are racketeers and shysters, but he knows one that he will unburden his whole heart to and leave his family welfare in his hands.

We have in the legal profession the requisite character and standing if we can but get it effectively organized and effectively expressed. The difficulty, as I said before, is that a small minority in the legal profession is able to cancel the influence in the public mind of the rest of the bar.

Now this committee really does not mean to propose anything that is impractical or revolutionary. The first problem which I believe the adoption of this report will go a long way to accomplish is to arouse in the average lawyer the *consciousness* that he has a problem. A great many lawyers, as we deal with this situaiton in a bar organization, are entirely unconscious that anything has happened to the legal profession in the last twenty years, or that anything is going to. If you can get this thing discussed, if you can get the bar to realize that they have a problem, then you can arouse the bar so they will sustain their organization.

My friends, aren't we rather silly, to put it baldly, trying to sustain our professional activities on the dues that we now pay? Isn't it absurd to expect that our professional interest can be protected on four or five or six dollars a year, or ten? Isn't it worth as much to sustain our profession as it is dues in a third class secret society? Why, compared with the dues you pay in automobile clubs and other things that represent but a fraction of your interest, you are not contributing to your profession anything at all. Now before we can remedy that situation we must do two things. One is to awaken the bar to the *consciousness that there is a problem.* Secondly, to convince them that the *organization is whole-heartedly attacking that problem.* And I believe that the adoption of this report, which would lead to a general inquiry of legal associations made in all parts of the country as to what they are doing, what should be done, would go a long way in the educational work that must be accomplished. The second thing is that of course we cannot accomplish anything with organization unless it has the support of different groups, of these different types

of organization in different states; and there is necessity for working out some reconcilement of their different types of organization and different views; and this report attacks that problem squarely.

Then we might as well learn frankly and fairly to what extent the bar of the United States will support its leaders in their efforts to accomplish these things. In other words, this report proposes what I believe is the only successful mode of attack—that this problem be taken right squarely to the lawyers themselves as represented in their more local associations. I believe that the report proposes a work which will extend over several years, that it will entail a lot of work that will not be dramatic or spectacular, but which is highly important and necessary if anything is to be accomplished; and I certainly, with all my heart, second your motion that the report be adopted.

Ohio Offers Good Example

Mr. Province M. Pogue of Cincinnati, a member of the Executive Committee, spoke at some length upon useful activities of the Ohio State Bar Association which had contributed to the integration of the bar in that state. He referred especially to their publication called "The Ohio Bar" which began as a four page folder and is now a very substantial weekly publication which gives to the profession every Saturday the decisions of the Supreme Court rendered only four days before.

In Ohio a Conference of Bar Delegates was created a number of years ago and regularly functions by bringing to the meetings of the Ohio Bar Association representatives of the county associations, of which there are 78. In the other ten counties, where there are only a few lawyers, the president appoints delegates directly. The State Association has performed notable work in drafting a corporation code, as an aid to the the legislature, under a joint resolution. In drafting that code and in subsequent similar labors the Association developed a technique. Its committees invited the attention and assistance of various lay bodies and groups and of the public generally. All interested persons were permitted to contribute to the deliberations. The result was that the legislature became impressed with the fact that the lawyers were working not for their own interests but for the public at large. The corporation code was adopted with less than ten negative votes in the entire legislature. Later a new criminal code of procedure and a new blue sky law were drafted by the Association and enacted by the legislature. At the present time the Association is preparing to offer the legislature a new code of probate law. The policy of the Association has been to submit to the legislature only one or two important measures at a single session.

The movement to secure self-government for the bar by legislation has been advanced in the same public manner and the Bar Association looks forward to the next session of legislature with confidence.

A bar association in order to do useful work must have sufficient revenue. The state association dues in Ohio were at one time $2.00 a year. They have been successively advanced until now they are $8.00 a year. The increase did not reduce the membership. In 1923 there were 1,500 members. There are now nearly 4,000 members. The speaker said:

> It has not affected the membership one iota. Gentlemen, when you have the money to build, and let your committees work and let the public know what is going on, then you are going to do the most effective work.

Mr. Chandler's View Encouraging

Mr. Jefferson P. Chandler, chairman of the committee on reorganization created by the Executive Committee, was asked to present his views. He said that no one can say what the sentiment of the American Bar Association is in respect to reorganization. The conditions are entirely different from those of ten years ago. A great deal has been done in the various states to make lawyers realize their responsibilities and duties.

We have found I think almost everywhere in the United States that the lawyer is an individualist, that he has less inclination for an organization to protect himself than the man of any other profession. It has been more difficult to bring them together. Now that work has been done to a very large extent. It has been educational; it has been the work of numbers of individual lawyers working in their own home towns, until the sentiment for organization, for community work, has grown.

In the meantime, the American Bar Association that started out rather as a social gathering has increased in numbers. As the lawyers became conscious in their own community that there was necessity of a national organization, they have joined the American Bar Association until they have increased its membership to about 30,000. Now, we find that the machinery that was devised for handling it in the early days is not sufficient to handle it with its present membership; that it has to be revised, it has to be enlarged. The Association has to come in closer contact with the lawyers of the country, and I am satisfied that the Executive Committee as it now exists, and any Executive Committee that will be elected by the Association, will be favorable towards some steps that will make the work of this Association more effective.

What they do depends upon what the lawyers of the country think ought to be done. There is a diversity of opinion. In my state, in California, I suppose we have gone the limit. We have what we call the State Bar, where every lawyer is a member of that bar, operating under a charter. From that you go to the other extreme where there is probably very little organization of any kind in some of the states —probably as loose as it was fifteen or twenty years ago.

Mr. Chandler pointed out that the original scheme for coordinating the national and state associations through a vice-president and local council in every state had not accomplished the purpose intended to any material extent. Continuing, he said:

> Any other scheme that is devised will not be good unless it is used, and it will not be used unless the lawyers of the country themselves have come to a consciousness that it should be used.
>
> And I believe that they have in a measure reached that conclusion, and it seems to this committee that if a large committee is appointed by the Executive Committee, or larger than the present one, that they can ascertain the sentiment that exists among the lawyers of the country and work out some plan by which this association will be more closely connected with the lawyers of the country, be more representative, can speak with greater authority, and by which the work of this Association can be taken back to the lawyers and they will feel that it is their work and look on it favorably.
>
> At the present time the great work that this Association has done—and there is a lot of great work—is lost. It does not get back to the lawyers. They do not feel that it is their work, and the public generally does not feel that it is the work of the lawyers as such. We have to devise some scheme by which the lawyers will think it is their work and will take an interest in it and will know what it is, and the public will take the same interest in it, and the legislatures will feel that they are speaking for the bar of the country. Just how that can be done is a matter that will probably take two or three years to work out, and maybe longer, because it should be a matter of growth. It is not a question of today, it is a question not of two years, but it is a question which when it is now done should be done as near right as the lawyers of the country think is right in the present state of mind. We can find out what the present state of mind is and from that work out what we believe to be a conservative, proper action for this Association to take to properly represent the lawyers of the United States.

Pennsylvania Affords an Example

Mr. Harry S. Knight of Pennsylvania, who had been acting Chairman of the committee of the General Council during the absence of Judge Armstrong in Europe, said:

> I am not so much interested in what has been said by one of the speakers here, that the lawyers should ascertain their

rights and assert them. I am more interested in the lawyers ascertaining their *duties* and performing them. We get too many assertions of rights in soap-box oratory, and have all through the history of this country; but we get very little discussion of what our duties are, both as lawyers and citizens. And it is to that that I want to direct your attention just for a moment. If our duties are merely the practicing of law, the drawing of deeds, the giving of advice and drawing documents and the trial of cases in the open forum, we do not need this organization. But if we have a duty as officers of the judicial department of our government which we are sworn to perform, and we are officers of that part of the government, then we have a duty, which is that, in addition to merely serving our clients in our offices and in the courts, of assisting in perfecting or bettering the form of judicial administration, that for which the public holds us responsible.

They hold us responsible for the kind of lawyers we have, they hold us responsible—they speak of the bar as an organization. If we are to be responsible for this situation, then we have a duty to perform which I fear many of us are not performing. There was a time not so very long ago when gray haired men like myself will remember that the individual could perform that duty and hold that position with influence in the community, as an individual. You remember the days when the lawyer in the small community was the leader of that community. He was the wise man to whom they went for advice concerning public questions. That day has passed. Why? Not so much because the lawyer has degenerated as because the level of intelligence has been elevated. The lawyer probably has not come up with that level. He has stayed at one place and the level has gone up. They have not risen together, and that is one of the reasons we have not availed ourselves of the spirit of the times, that of organization, which all other people are doing. What is the vision of this committee? We have an Association here of about 30,000 members. When we meet in Chicago, we can pass or defeat anything that the Chicago lawyers want to pass or defeat, because they predominate. And when we are in Memphis or Seattle, we pass anything that they want or defeat anything that they do not want. And what chance has an Oklahoma lawyer in Chicago, or what chance has a Pennsylvania lawyer or delegation in Chicago? We haven't enough lawyers in Pennsylvania that earn enough money to get out to Chicago. And when we have this meeting in Pennsylvania, I doubt if you will get enough people from Nebraska and Nevada that will have enough money to come to Pennsylvania and pass anything they want.

So you see it depends on geography whether we have endorsement of prohibition, or whether we don't, in the American Bar Association. Therefore our vision is that we should have an Association here that is representative, so when some worth while thought is presented to the meeting of the American Bar Association, that will be taken back to the state and county bar associations so that it will be discussed in the villages and hamlets among the lawyers.

Mr. Knight said that the United Mine Workers had so created their organization that if some member should advance a worth while idea for the benefit of the Union on Saturday night in some little mining hamlet, on Monday morning that idea would be in type at the national headquarters of the Union and during the following week would be disseminated to every branch throughout the United States. He suggested that as an instance of effective organization.

The speaker explained the system adopted by the Pennsylvania State Bar Association a few years ago when he was president, whereby local bar associations send delegates to the annual meeting who exercise genuine power in the direction of the Association's affairs. Members of the Association sit on one side of the hall, constituting what is called the Assembly. The delegates and representatives of local associations sit on the other side. Unless there is a call for a divided vote they all vote as individuals. If a divided vote is called, the Assembly side deals with the proposal, and if it adopts it, the delegate side then takes it up and approves or rejects it. The plan has worked very satisfactorily in Pennsylvania, stimulating interest on the part of the local associations and giving considerable power to their accredited representatives assembled in the annual state meeting.

Mr. W. F. Mason

Under the five minute rule the first speaker was Mr. W. F. Mason of South Dakota, who suggested that if the lawyers are to exert a large influence they have got to exert it on behalf of the people rather than on behalf of themselves. There are too many lawyers. If in a city where there are a hundred lawyers and there should be only one-fourth as many, an attempt is made to establish fees so that all the lawyers can "earn a good living according to modern standards of living by practicing one-fourth of the time and doing one-quarter of the work they should do, you will find out that you can not fool all the people all the time." We might just as well face this fact, that of all the young men studying law, three-fourths of them can not be expected to earn a living practicing law. We find the prominent lawyers picking out the most competent beginners to assist them, and the matter of over-supply will ultimately solve itself in that way; the better class of lawyers will be given a start by responsible firms, but the great majority of those who are admitted will have to go to work at something else.

I think we could best pattern a reorganization of the American Bar Association after the American Medical Association, in which the membership is absolutely voluntary, not compulsory, and is variously estimated at from 61 to 63 per cent of those who are entitled to be admitted; and I think the first step is hereafter never to admit a man into membership into this Association unless he is a member of the state association.

Mr. Merritt Starr

Mr. Merritt Starr, of Chicago, struck a responsive chord when he spoke of the excessive amount of legislation. He quoted Senator Robinson as saying that there are, in round numbers, 15,000 acts of Congress in force (but not enforced) and that personally he believed it would be a benefit to the country if every odd numbered statute were repealed and we went on for a while with the even numbers.

If this Bar Association got behind a movement for the continual and studied revision and reduction of the National Code to a readable, workable form it would be fulfilling a great object of its existence, and the adoption of this report will promote that end.

Judge Goodwin

Judge Clarence N. Goodwin made a brief but persuasive suggestion, to the effect that the solving of the organization problem would be the work of the American Bar Association on the one hand and of the local associations on the other. He said to his mind it would be advisable to summon a national conference of bar association delegates, not to discuss a completed plan, but to make their own suggestions in regard to a plan to be formulated by securing the opinions of isolated units. In this way a loss of time would be avoided because the state and local associations would be thinking about the proposition at the same time that the American Bar Association is thinking about it.

Judge Hallam

Judge Oscar Hallam of Minnesota said that "We are all agreed as to the desire and the necessity for organization, whether we put first the performance of duty or the assertion of professional rights. In either case it is a matter of organization of lawyers." The speaker agreed with those who emphasize the necessity of efficient local bar organization and of efficient state associations of the bar. He suggested also that what

is most needed is development of the influence of the American Bar Association, saying that this influence is a matter of comparatively recent growth. Judge Hallam remembers when there was only one member of the American Bar Association in the State of Minnesota.

If we are to have an efficient, capable bar with nation-wide influence, it must be backed by the great membership of the American Bar Association with close co-ordination between the American Bar Association, the state associations and the local associations.

Now, we have a plan in Minnesota, by which every member of any local organization in the state is a member of the State Association. We are organized locally by judicial districts, and any man who becomes a member of his local organization automatically becomes a member of the State Association. I think we have that worked out admirably. I should like to see as one of the features of this Association that every member of any local association should by that act become a member of the American Bar Association. I think it can be worked out, and by doing so you are going to increase the membership of the American Bar Association, the contacts, the scope and the breadth of the American Bar Association, and its influence among lawyers and upon the country at large. I would like to see that, that every lawyer who is a member of any association at all should be a member of the American Bar Association.

Mr. Cressy

Mr. Warren F. Cressy of Connecticut thought it would be very helpful if the Bar Reorganization Committee could present a typical scheme for local bar associations and for their coordination with the state association.

Mr. Knight has foreshadowed the fact that the American Bar Association can no longer function to any general extent as a New England town meeting, that it must in time give its functions over to some representative and delegated body; and it would certainly be helpful to us who are struggling with this problem and endeavoring to work out the very thing which is being asked here, if some typical organization program could be set up by this committee here.

Mr. Clark

Mr. John Kirkland Clark of New York told the Conference about the significant work in federating local bar associations in the western and central part of the State of New York, in which Chairman Wickser and Mr. Robert H. Jackson had participated. The grouping of county bar associations for co-operation will soon extend to the entire state outside of New York City and at the last meeting of the New York State Bar Association the friends of this movement were successful in securing formal approbation with the expectation that the new federation will be given specific recognition and powers in the constitution of the state body.

Mr. Clark also said:

What we have got to get is the cooperation, and to get the cooperation, we must have the demonstration. That is the value of such demonstrations as Mr. Knight has given on what has been done in Pennsylvania, and of what has been done in Ohio or what has been done in these various other states. And as you men as delegates from various associations throughout the country go back and report and bring the information to your own organizations as to what can be accomplished by them and for the benefit of our profession to the community, we will get results. When the American Bar Association and its local elements, the state, county and city organizations, get to work and let their representatives know what the intelligent opinion of the bar wants, we are going to get what is for the public welfare, which is all that we want. And that is a discharge of the obligation, the privilege, the duty of service, which is the only obligation of the lawyer.

I believe that the report of the Committee and these various other suggestions point the way for the effective operation of the lawyers of the country through their local and state organizations by means of the national influence of the American Bar Association.

Mr. Sherriff

Mr. Andrew R. Sherriff, of Chicago, presented a problem of personal choice on the part of lawyers. When the Chicago Association of Commerce was created sections to cover every branch of business were created, to the number of about sixty, and among them a section of attorneys. The speaker said that he had come to the conclusion that lawyers had no proper place in commercial organizations.

Why is it that we lawyers have any tendency whatsoever to belong to a commercial organization? My own feeling is this—I am not reproaching the commercial organization. I would get all the members I could if I were running them. But it is a personal question, a professional question among lawyers. If we are talking about legal organization and legal identity, as professional men we want to begin to examine our standards and see where we classify ourselves individually.

Now then I put this question to you as I have put it to myself for several years: Would it not be very much better for the bar association and for the standing of the profession in Chicago, for the standing of the profession throughout the country, if lawyers established their identity and lived by their identity and took themselves apart from these compromising connections which they have no reason to preserve?

I say, gentlemen, that the best thing for all lawyers where they are members of chambers of commerce or similar organizations, is to quietly apologize to the management and say, "We have nothing against you whatever, but we owe our entire allegiance to the bar association, and that is where we are going to place it."

Chairman Wickser's Concluding Statement

Chairman Ridgway thereupon declared the discussion closed. The resolution adopting the recommendations of the Committee on Bar Reorganization was unanimously adopted and Chairman Wickser was given the floor to thank the delegates and speakers for their close attention and the valuable ideas that were contributed.

I would like to point out one thing of great importance. If anything good is to come out of the program which we have now unanimously adopted, much education, much stimulation of activity, must take place. That calls for just a little evangelism on the part of each of us. I therefore make bold to suggest that the members here present, when they return to their local associations take with them a copy of today's program and call attention of the local lawyers who are actively interested in advancing the best interests of the bar to the report which the committee has made, and as best they may to a summary of the suggestions which have been so valuably made on the floor. A committee of six or ten or two hundred will never put this program across. It is going to take the bone and sinew of the American Bar Association to put it across, and we are the people who have to get out and start the ball rolling.

Afternoon Session

Accident Litigation

Following the debate on compensation for motor vehicle accidents, previously referred to, the Conference gave attention to the reports of committees.[3]

The Special Committee on Accident Litigation filed its printed report in which it appears that this committee is co-operating with a national Committee to Study Compensation for Automobile Accidents. This latter committee is expected to make a very important report on the subject during the coming year and further action by the Conference committee will be deferred until this report is made public.

Rule-Making and Judicial Councils

Mr. Josiah Marvel presented the Conference with a pamphlet report of the Committee on Rule-Making Power and Judicial Councils, consisting of twenty-four

3. The reports of all committees are obtainable through the American Bar Association Secretary.

pages. The status of rule-making and judicial councils in all the states is presented and also the new act creating a judicial council for the State of New Jersey, adopted in 1930. In his remarks Mr. Marvel said:

> If this segregation of the administration of justice is taken out of the legislative department and is given to bench and bar, that will bring to bench and bar, more clearly than anything I know, a recognition of the fact that we, the bench and bar, are the judicial department of government. And just as soon as the American bar, nationally or locally, becomes imbued with the thought that we are the third department of government and, by virtue of these two things of which I speak, are clothed with the power and responsibility of better administering justice between man and man, then we will have that class consciousness which was spoken of this morning with such zeal and force and effect; we will recognize our duty to all the people in the administration of justice. We will do our part everywhere, not only to our particular client, but to the people at large, and it will not be long before in every state and in the nation the bench and bar will assume responsibilities in the administration of justice which will give them their place in the government of the nation and of the states.

Chairman Ridgway then spoke of the part the Conference had taken in 1929 in bringing together delegates from judicial councils, which led to the organization of the National Conference of Judicial Councils, which would hold its second annual meeting on the succeeding day. He also introduced Judge Harry A. Hollzer, Chairman of the new Conference, who invited the delegates present to attend the meeting of the National Conference of Judicial Councils on Tuesday, August 19. The question of suggesting to the Executive Committee the propriety of giving the new National Conference the status of a section of the American Bar Association, was discussed and a motion to that effect prevailed.

Bar Organization

Clarence N. Goodwin of Illinois presented the report of the committee on State Bar Organization and referred briefly to the very successful meeting, sponsored by the Conference of Delegates, which brought together in Washington on May 7, 1930, representatives of integrated state bars and all states in which the state associations are committed to the project. A rather full report of this meeting was published in the AMERICAN BAR ASSOCIATION JOURNAL for July, 1930.

Judge Goodwin said that when his committee was created there was an assumption that statutory organization of the bar implied a development similar to that common in the Canadian provinces and among the bars of Continental Europe. However, the trend of events had been different. By merging the existing state bar associations and preserving their multifarious interests, policies and methods of work, with the inclusive organization created by statute, we had done something entirely modern and original and very much more significant than was originally conceived.

Taking the State of California as an illustration, the result of official organization was that the entire power of the bar was regimented. The new organization was able to speak for the entire bar and it gave the bar power for the improvement of judicial administrators that does not exist in any other country, creating something that was entirely new in human experience. All that had been developed in many years of voluntary organization had been preserved and amplified in the new official and all-inclusive state bar. Referring to the meeting of integrated bars on May 7, Chairman Ridgway said that a pamphlet containing the various state bar acts together with annotations of decisions passed upon a number of debatable points was in the course of preparation and would soon be available for the guidance of those interested in the movement.

Co-operation Between Press and Bar

Mr. Andrew R. Sherriff of Chicago, chairman of the committee on Co-operation Between the Press and the Bar, supplemented his published report with an interesting statement. Mr. Sherriff had been invited to address the American Society of Newspaper Editors at their meeting held April 19, 1930. The result of his address was the creation by the Editors' Society of a committee to cooperate with the committee of which Mr. Sherriff has been chairman. This action, Mr. Sherriff said, should widely spread the influence for better reporting of trials and decisions and for dealing with the judiciary in a dignified spirit in the public prints. This attitude of the press may be expected to reflect back upon the bench its great responsibility to conduct their affairs properly. A communication from Mr. David Lawrence, managing editor of the United States Daily, who is chairman of the new committee of the American Society of Newspaper Editors, was read by Chairman Sherriff.

Ethical Standards and Discipline

The committee on Ethical Standards and Discipline did not make a report, but Mr. Walter R. Arnold of Indiana, a member of the committee, was given the floor to speak about the problems of discipline in local associations as experienced by grievance committee. Mr. Arnold said that he had once vigorously opposed the idea that bar discipline should be in the hands of district associations or federations of bar associations. He then felt that we should not, as a profession, "confess our own inability effectively and fearlessly to deal with delinquent members of our local bars."

Subsequently he had his first experience as a member of the grievance committee of his local association, and was obliged shortly to change his views. He found that among many unwarranted complaints there would occasionally, perhaps once in a month, be a case in which an attorney had been guilty of misconduct.

> Immediately he gets in touch with every attorney that he could ever call his friend at that bar; he gets in communication with bankers and physicians and politicians and officials, wherever his hand can reach to bring pressure upon the committee, either to deal lightly with him or to totally eliminate the complaint.
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> Now what should the committee do? Of course we know what the committee should do. It should be totally deaf to all these efforts at wielding influence against it. It should have the judicial mind, be entirely immune from any of this pressure, this evil influence that is brought to bear. But what is the fact? We are constantly dealing with banks and trust companies, not for ourselves, perhaps, except when we want to make an occasional loan, but for our clients handling real estate transactions and transactions involving financing in large sums; and if the president of this company or bank calls you up and says, "Now here, I have known this young lawyer for several years. He probably did take a misstep in this particular instance, and this is the first time,"—it may be his second or third offense as far as the committee has knowledge—"nevertheless, I would feel it a personal favor if you would be easy on him"—or take such steps as to totally obliterate the charge.
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> The committee meets under the circumstances for action, and there usually is an indication, unless the case is so flagrant as to impress each member with the fact, that notwithstanding this barrage of influence that is being sought to be wielded, he did not see his duty and act upon it. I say, people, that it is just as essential to assert the wrongfulness of a trial of a lawyer for dis-ethics by a noble committee of his comperes as to assert the right of trial by jury in the vicinage in the case of a private person. It is a wrong to the public. It is a wrong to the public to permit this disposition before a committee composed of local members of the bar who are subjected to this

pernicious influence from all sides in situations where it can scarcely resist it; such a wrong as denial of the right of trial by a jury of the vicinage would be in the trial for crime of a private citizen.

The speaker referred to shrewd solicitation by friends of lawyers defending criminals and referred to it as a racket that is worked in his community.

It is a prostitution of our profession, and the only effective way to deal with it is to get it away from the local committee. The proposal that I put before you to carry home, fellow delegates, to your constituents, is that time be given for discussion and intelligent thought with reference to grievance committees of groups of counties, not necessarily adjoining, but in the same congressional district, sitting in judgment upon members of the local bar. In other words, exchange committees of grievance, each county dealing with the situation without being subject to that pernicious and unholy influence that is being wielded by sometimes misguided, but often by powerful and very influential allies of crime.

Discipline in State of Washington

Mr. Dix H. Rowland of the State of Washington, told of the success in his state of a disciplinary board of three members appointed under statute by the Supreme Court. In the counties grievance committees conduct the first investigations and report to the state board. This was done to get away from the difficulties mentioned by Mr. Arnold, and the system has worked very well for the past ten years. In answer to a question Mr. Rowland said that probably not more than one-fifth of the complaints result in trials but where there is real misconduct there are certain to be trials. "We have in the last ten years, I think, disbarred and suspended about fifty lawyers in our state." The members of the board receive $1,000 a year each in salary and the clerk of the supreme court acts as secretary.

California's Effective System

Chairman Ridgway briefly detailed the disciplinary system which has been extremely successful in California. There are committees for investigation, composed of three lawyers, known as administrative committees, for every county in the state and in Los Angeles there are nine such committees in operation. They have all the powers of a court; the power of subpoena, the power to administer oaths; and they make the recommendations to the Board of Governors of the State Bar. Each month the Board of Governors considers from twenty-five to fifty disciplinary cases.

"Three of the Board of Governors are present today, having just left a meeting of the board held in Pasadena at which fourteen members were present, the fifteenth being absent on a trip abroad. We passed upon 25 or 30 cases at this recent meeting. We confirmed the decision of local administrative committees dismissing charges against about fifteen attorneys. We disbarred four attorneys. We suspended one for ambulance chasing for a period of a year; another for six months; and we administered a reprimand to three lawyers who had been guilty of ambulance chasing but had abandoned the practice a year or more before the charges were filed.

We have the problem suggested by Mr. Arnold in the small communities where the local administrative committee not necessarily declines, but regrets to take up charges against members of their own bar. In those cases, they generally refer the matter to the Board of Governors, and we in turn appoint a local administrative committee from *another county* to pass upon the matter then pending before the accused attorney. These matters sometimes come to the Board, and the Board finds themselves confronted with passing upon the guilt or innocence of men whom we have had acquaintance with for many years.

I was recently called upon as a member of the Board of Governors to vote for the disbarment of an attorney who officed on the same floor with me in Los Angeles whom I had known for several years and with whom I had been in litigation on opposite sides.

I will say that we are never subjected to the influences such as has been suggested by Mr. Arnold, either in the local administrative committees or with the Board of Governors. These committees are treated the same as any *judicial tribunal.* No one dares to approach them with the suggestion of influences. I do not think that any member of the Board of Governors has ever been approached by anybody attempting to influence a governor in favor of any party who is accused. This probably may be due to the fact that our disciplinary hearings before the local administrative committee are held in private. No publicity is given to the trial of an accused attorney until the local administrative committee has made its findings and these findings have been approved by the Board of Governors of the State Bar; and only when the Board of Governors determine to suspend or disbar or to publicly reprimand."

Mr. Lyman Evans of California supplemented Chairman Ridgway's statements by telling of the careful investigation made into the records of lawyers who come from other states to apply for admission. The influence of the new State Bar, which in its first two years aided in the disbarment of more lawyers than had been disbarred in the entire seventy-eight years of California's existence as a State, has extended to improvements in regard to simplification of criminal procedure. Under a new act jury trial is waived in about half of the felony cases and Mr. Evans thinks that the time is not distant when misdemeanor cases will virtually all be tried by a judge.

Judicial Selection

Mr. Austin V. Cannon of Cleveland, chairman of the committee on Judicial Selection, amplified the printed text of the committee's report. He said that during the past year the Cleveland Bar Association had revamped its plans for recommending judicial candidates to the electorate. Under the new plan a committee of thirty representative members of the bar will send to the lawyers a searching questionnaire. As to sitting judges who are candidates it will ask lawyers to say whether they open court promptly, are courteous, have judicial temperament and whether each such candidate is to be considered worthy of re-election, As to candidates not already on the bench the lawyers will be asked whether they know them socially or in a professional way, whether they ever saw them try a lawsuit, as to their judicial temperament, and whether they think the candidate will make a good judge. The new plan will go into operation in September and its success will be reported upon next year. Mr. Cannon said that heretofore candidates have spent from $5,000 to $15,000; each has had his own campaign committee; each has sought in various ways to reach the voters by making speeches and giving out interviews, some of which ways "do not elevate the standard of the judiciary in the public mind."

Under the new plan the candidates are requested to give a pledge that they will live up to the following simple rules: that they shall have no separate committees and that they shall raise no separate funds themselves. We do not propose to tell the candidates what meetings they shall attend—we have had instances where judges refereed prize fights. Each candidate must determine for himself what meetings he will attend and what he will not attend. This questionnaire is entirely secret. Now it is not fair to the candidates to say that they shall not have their own campaign committees or raise campaign funds unless the bar association itself backs the candidates whom they select.

Next the vote is taken by the bar association as to whether they will sustain the committee or not. The candidates thus finally approved will be supported by the association, which will carry on a campaign in their behalf and will raise a campaign fund from the bar and the public. The public is to be asked to contribute

one-half of the budget. "We are confident that adequate funds will be secured."

I do not think it is right for a judge to be aided by campaign money which is raised for him by his friends through solicitation in the bar. We are seeking in Cuyahoga County to do away with the influence which may attach to private solicitation of funds and say to the public, "You support this campaign and support the lawyers because the lawyers are more competent to judge as to what men are capable and what men are not capable for the judiciary."

Let Bar Nominate Judges

Mr. P. Walter Brown of Texas submitted a proposal that the bar be permitted by statute to nominate judges. He would have all registered lawyers vote on ballots submitted by the clerk of court on each judicial office to be filled. On a canvass of the votes the two candidates receiving the largest number of votes would be the only candidates for the office and their names would be printed on the official ballot on all tickets. Such a selection of candidates by a secret ballot would do away with the undue influence of the larger law firms.

Compulsory Compensation Insurance for Motor Vehicle Accidents*

I MAY not hope that in the time assigned to me I can present this subject with anything like the thoroughness that its importance demands, and so I will have to devote myself largely to a review of the conditions that obtain in this country and which must challenge our sense of decent regard for the rights and obligations of those who must use the streets and highways, and perhaps outline briefly some of the problems that must be met in setting up a compensation system.

There was published late in 1926 the Report and Recommendations of the Metropolitan Street Traffic Survey for Chicago and vicinity. That report presents a vivid picture of traffic conditions here, and while there is but one Chicago the situation in other large cities of this country, as respects street congestion and hazard, is fairly comparable. On the basis of relative population the condition in the smaller cities will not usually rate much less serious. And so for my purpose today I expect to make use of some of the findings in that survey, some figures from the publications of the National Safety Council and certain other statistics so that we may visualize the setting under which we expect pedestrians, motor vehicle owners and transportation companies to use the public streets and highways.

There is less than a square mile of area within the district which is bounded on the north and west by the Chicago River, on the east by Lake Michigan and on the south by Roosevelt Road. A cordon count made in May, 1926, shows that 1,693,506 persons enter or leave this district during the twelve-hour period from seven A. M. to seven P. M. of an average week day.

Of this number the street agencies, i.e., street cars, motor buses and passenger cars, handle 983,818 persons, over 58 per cent, and the balance of 709,688 were carried by the so-called off-street agencies such as the elevated railways. This same count shows that in a typical day 314,640 street agency vehicles enter or leave this district,—over 20,000 street cars, 4,475 motor buses, 226,250 passenger autos, 51,371 motor trucks and 12,071 horse drawn vehicles. This takes no account of the movements within the district, and authorities estimate that within the square mile there are a half million vehicular movements each typical week day.

Within the semi-circle described by a forty-mile radius from the intersection of State and Madison streets there was a population according to the 1910 census of 2,752,821 and in 1920 of 3,521,842. The estimate for the present census is 4,500,000. In twenty years it should reach 6,500,000.

In 1910 the registration showed 12,926 motor vehicles in Chicago, one for every 169 persons. In 1920 there were 119,000 cars, or an average of 22.7 persons per car. In 1925 there were 341,468 or an average of 8.9 persons per car. I do not have the present registration for Chicago but it is reported that there are 26,653,450 in the United States, or an average of one to every 4.5 persons.

There are in normal times probably a half million of factory workers in Chicago having to go to and from their work places each week day. There were in 1926, 105 office buildings in this city, twelve or more stories in height, the majority of them housing over 1000 people each, and some of them more than 5000. There are 70 of these buildings in New York, each over thirty stories in height. The Empire State Building has been planned for eighty-five stories. When completed and in full use it is estimated that its normal population will approximate 15,000 people. Every sizeable city is making general use of the many stories building for mercantile and office purpose. Department stores, theatres, hotels, schools and churches add their quota to the daily traffic record.

For the transportation of our people we are depending in an ever-increasing degree upon the motor vehicle. From the day when it was possessed as a luxury by just a few, the average use now represents a car for every family and it has become a necessity.

Along with the increasing use has come the development in weight and power and speed. The cars weighing up to 3000 pounds or thereabouts are capable of doing as much as sixty miles on the open road. The medium weight cars will travel seventy or more miles per hour and owners of the heavier ones claim speed capacity of upwards of eighty-five miles per hour. An automobile advertisement, carried widely in the papers in this section of the country on July 30th, reminded the public that this medium weight car has "under its hood" an engine or "93-horse power" and that this means among other things "speed of 75 or more miles per hour". Two weeks ago Sunday another medium weight car carried an advertisement that after having traveled 29,000 miles at an average speed of more than 68 miles per hour it made the last 1000 miles of a 30,000 mile test at the rate of 71.67 miles per hour. Speed and more speed is the trend of the times.

And then to make it possible to use these 26,653,450 cars to their reasonable capacity we have built and are building paved and hard surfaced roads and streets at a pace that staggers belief. We take out the curves and round the corners and cut down the grades and widen the culverts and barricade the ditches and remove the snow and otherwise encourage more and more use of these vehicles. And again the all-year and all-weather condition of these streets and highways is developing the use of the motor bus and motor truck for public transportation of passengers and freight to the point where they are supplanting in material degree the railway systems. Then we license use of these roads and streets at rates of speed that have reduced many fold their safe use by pedestrians and other vehicles.

Traffic counts were made by the Wisconsin Highway Department on nine different days during last summer on a large number of the trunk highways at points outside the cities of the state. The total count was 1,731,515. The maximum for one day was 267,456. Many of the counts at individual points showed highways carrying from 15,000 to 20,000 vehicles per day.

In February and August of 1925, they counted the vehicle traffic at the corner of the University Campus in Madison where Park Street intersects University Avenue. On February 28, between 8 A. M. and 8 P. M., 9237 motor vehicles traveled this intersection for an average of 770 per hour and a maximum of 1064 between 4 and 5 o'clock. On August 12th of that year, 11,332 motor vehicles crossed at this intersection within a like 12-hour period for an average of 945 per hour and a maximum load of 1266 between 5 and 6 o'clock. You have heard the records of traffic counts in your own state and the figures I have been giving you from the first are in substantial harmony with experience everywhere.

What does it mean to put in the street the men and women pedestrians who are enroute to or from the office, the factory, the store, the theater, the church and the hundred-and-one other places that require their presence while these same streets are being used by lanes of high-powered, high-speed motor vehicles and whose drivers, by and large, assume a prior right in the streets? What does it mean to send your children to school over streets and street intersections also in use at the same time by these same vehicles? What do all of these street and highway exposures to motor vehicle traffic mean to us and to our right

*Address of Fred M. Wilcox, Chairman, Industrial Commission of Wisconsin, at meeting of Conference of Bar Association Delegates held at Stevens Hotel, Chicago, August 18, 1930.

to the reasonable use of these public ways? This table of experience showing motor vehicle fatalities for the past five years will tell you something of what it means:

Year	Deaths	Per 100,000 Population	Per 100,000 Cars Registered
1925	21,926	17.0	98.4
1926	23,509	17.9	95.5
1927	25,851	19.5	100.2
1928	27,966	20.8	101.7
1929	31,000	22.7	104.5

Approximately 20 per cent of these fatalities were of children under 15 years of age, and over 25 per cent were of men and women past the age of 55 years. For 1929, 55 per cent of the whole were pedestrians, and 19 per cent arose out of motor vehicle collisions. The ratio of fatal accidents to the non-fatal is about 1 to 35 in contrast with the industrial experience where the ratio of fatal to non-fatal is as 1 to 130. I am not able to estimate the property damage, but do remind you that the National Safety Council estimated the economic loss for 1929, personal injury and property damage, at $850,000,000.

The record presents to your state and to my state its most important task. Some way must be found to insure reasonable distribution of this loss. The personal injury suit is the only course yet provided, and this course, as it works out in practice, is just an excuse and not a remedy. With cars traveling from 25 to 50 miles per hour collisions occur in a flash. Who was to blame? To whom will you assign the fault? No two of the witnesses saw it alike. Oft times no one was really at fault in any practical sense. At least calculation the fault, if any, amounts to nothing more than a confession that in emergencies we select our course by chance rather than by the exercise of real discretion. If we get out of the difficulty we take credit for "great care and skill." If damage results, "someone else was to blame."

And then we proceed to settle the rights and liabilities according to the law of negligence. At the end of a day we shoo 15,000 workers out of the Empire State Building into the streets that surround that block and expect each of them to make escape through a seething mass of street cars and automobiles and motor trucks and thousands of frenzied, running, dodging, crowding pedestrians. If they are run down by a truck and injured they must not only establish negligence of the trucker but freedom from neglect on their own part, and failing in either must suffer the damage alone.

As applied to this field of auto accidents the present system is pure, unadulterated mockery. To make matters worse we are not only glutting the courts but bringing them into disfavor because the system puts upon them the obligation to see that justice is done under law and sets of circumstances where justice is not possible.

A Justice of the Wisconsin Supreme Court said to me recently that the "burdening of court calendars is not the most disappointing aspect of the matter because additional court facilities would remedy that feature. The sad part of it all is to find myself expected to reach a just decision on the basis of a record made up of testimony in most radical conflict by witnesses who were apparently endeavoring to give honest account of the facts, when I know full well that what they thought they saw occurred in such a fraction of a second that they lost the sequence of events."

A late president of the Wisconsin Bar Association said to me, "I am ready at all times to affirm my wife's reputation for truth and veracity except in disputes about the facts of an automobile accident".

It seems to me that in a system of compensation, where fault is not a factor, we have our only promise.

It was in 1911 that we had our first valid state workmen's compensation legislation. Ten states qualified, the Wisconsin, Nevada, New Jersey, California and Washington laws becoming effective that year and in that order, Kansas, New Hampshire, Ohio, Illinois and Massachusetts passed acts to become effective the following year. Arkansas, Florida, Mississippi and South Carolina still remain outside the plan.

The principle underlying this type of legislation has been so unanimously and generously endorsed that there are few now who care to raise a voice against the fundamental purpose. There are plenty to protest specific parts of these laws but not many ready to abandon it as a whole. And so the system of paying medical and indemnity benefits to injured workmen without undertaking to fix the fault may be regarded as firmly established.

What it cost in argument and effort to get these laws is still fresh in the memory of many of you. Those who opposed workmen's compensation most vigorously at the outset are in these days of appeal for the extension of the system to cover motor vehicle accidents endorsing workmen's compensation but arguing alleged vital differences and presenting the same line of attack as was used back in 1911. In importance of the problem, in matter of social need and in fundamental reason for adoption there is many times the degree of urgency for action.

I do not arrogate to myself the notion that I have thought out all the important details of a compensation system, but on such study as I have made and on many years' experience in the administration of workmen's compensation, I am ready to declare that a system can be devised that is not only practicable but essentially just. Any well selected committee of interested and experienced compensation administrators with the aid of an insurance expert and some one who is experienced in the traffic and safety field can design a law which for the handling of liability for motor vehicle accidents will prove a better balanced and workable piece of legislation than the early workmen's compensation laws of this country. And that is not belittling the work of or denying credit to the men who pioneered the field of fashioning compensation legislation for your state and for my state. But the men who will model laws for this new field will have the benefit of nearly twenty years of investigation and legislation and administration of compensation. The experience is ripe and we need not re-enact our mistakes.

The most important question for consideration will be the character of the insurance protection. Whether through the service of private insurance companies or by a monopolistic state fund or by a moncpolistic mutual insurance company or through the agency of a gas tax, an election of plan must be made by the designer of the law at the very outset. Each will have certain definite advantages over the other and each will have specific shortcomings. The ease with which we are to master the hard places and those points at which there is failure to solve will depend on the type of insurance plan we select.

I have no one last and only choice to urge. I express preference for a monopolistic mutual over a monopolistic state fund for the reason that the former can be so organized and managed as to retain private character and relieve the state from the necessary obligations that attach to a state administered fund, at the same time securing the economies that monopolistic systems have over competitive companies.

If there was no other tax upon gasoline or car fuel such a fund-raising plan might be considered as convenient and after all a satisfactory means of distributing the load, but the levy in most states is now of such character that any substantial increase would promote boot-legging of the product.

Wisconsin from the first has made use of private insurance companies for the guaranteeing of compensation payments. It is my judgment that we have never actually come near to a change, notwithstanding numerous efforts to legislate in favor of a monopolistic state fund. I recognize many points of advantage that could be urged in favor of the extension of the authority of private insurance companies to function in this new compensation field. But if to be adopted by the legislature in my state I hope they will not repeat the mistake they made under workmen's compensation by allowing license to every company applying for entrance to the field.

More than half of the sixty companies operating in Wisconsin do not have enough of premium income to justify the establishment of an efficient state agency, the proper audit of payrolls and a complimentary program of safety inspection. If they are to be accepted as part of the operating machinery in this proposed system then economy and a just regard for the rights of the public require that the number licensed be sharply limited,—just sufficient to furnish healthy competition and give reasonable assurance of a volume of business essential to good service and modest expense loadings.

And now may I list some of the things that seem to me practicable considerations in a compensation system. I am ready to urge that the benefits of personal injury and death should be identical with those accruing under workmen's compensation, and that these benefits should be administered by the same department. That will insure uniformity of administration and decision, avoid confusion and misunderstanding and protect the public against any contest between the systems.

I believe that benefits should be payable for property damage like as for personal injury and on a like percentage

basis. To relieve against the burden of administration for minor property damage accidents I would provide for the equivalent of waiting period loss such as we have under workmen's compensation. That would mean that the owner of damaged property would have to bear his own loss up to $25 or some such selected figure, and eliminate the fender, bumper and hub cap damage claims. If the system did not include property injury benefits within its scope then we would still have to labor along with the same inefficient, impractical, unjust and expensive common law scheme for handling that damage factor in every highway accident. Every cautious car owner would then be compelled to carry two different types of insurance protection,—one to meet the requirements of the compensation plan for personal injury and the other to protect himself against property damage claims by others. Insurance protection against damage to his own property, if desired by him, would require an additional coverage provision. Relief from court congestion would not be materially influenced by such a dual system, and the whole situation points to the need for complete coverage of the field, personal injury and property damage, within the scope of the plan.

I have the opinion that, in general, the benefits of the law should not be extended to meet personal injuries or items of property damage except there is involved in addition to the motor vehicle which is covered by the law and its occupants some other vehicle or some other person or some other property. That is to say, benefit coverage probably should not be extended to the man who drives off the road or into a culvert, or whose car burns because of crossed wires or back-firing, or who sustains a broken wrist from cranking his car, or for those other types of injuries and damage which are inherent in the car itself or of its use as distinguished from the injuries and damage arising from the concurrent use of the streets and highways by such car along with other vehicles and other persons and other property. Exception may be called for in favor of passengers in public motor vehicles. There may be still another and sufficient reason why property straying within the highways should be deemed outside coverage of the law. Many situations will require special treatment.

One of the most troublesome problems will center about the provision for out-of-state cars. If the funds are raised by an insurance charge on each licensed motor vehicle then I am disposed to think that a state might well grant leave to foreign cars to use its roads and streets for some reasonable period, to be definitely fixed, without being obliged to assume or insure liability under the provisions of the state's compensation law. In such a case the "comparative negligence" doctrine might be adopted for the adjustment of all highway injury claims in which such car may be involved.

The rights and liabilities of those who are injured by reason of the collision of a system motor vehicle with street and other railroads will call for special provision. It is a matter of plan of handling and not a particularly difficult problem to meet.

I have in mind that even with the adoption of a comparative negligence scheme, the foreign car should be limited in its recovery against the licensed home car to the equivalent of benefits provided under compensation. If intelligent concern is given to the convenience and protection of the foreign car by the offering of short term insurance coverage under state compensation at reasonable rates, the problem will be reduced to a minimum. Extension of protection of the domestic car while traveling outside the state ought to follow the car up to the limits of liability under the compensation plan. When states have progressed in this field to the point they have reached in workmen's compensation, they will find it easy to set up mutual plans for the adjustment of the rights and liabilities of their people.

To encourage safe practices, I am disposed to think that provision similar to the increased and decreased compensation schedules found in the Ohio and Wisconsin laws might well be adapted to the plan. Accidents due to failure to observe specific traffic requirements could be brought within such a plan. It may be that certain persons, like, for example, the one who drives his motor vehicle while intoxicated, should not only have recovery for his damage reduced but denied altogether. That is a matter for legislative consideration.

It goes without saying that the owner of every motor vehicle included in the state system should be required to insure his risk, subject perhaps to the right of exemption to those who establish their financial ability to discharge all obligations under the law, the same as now obtains under workmen's compensation in a majority of the states. License of the vehicle to use the streets and highways should not issue until proof of insurance coverage is made. And such policy should by law be declared to be non-cancellable and non-revocable except upon adequate notice to public authority.

A good, live experience rating system of debits and credits should be adopted as an adjunct to the insurance plan, and perhaps a schedule rating system to encourage use of non-shatterable glass, good brake and light equipment. Process by which licenses may be revoked, cars impounded, and other restraining influences secured should be made easily available to administrative authority to protect the public and the insurer against those who abuse their privilege in the streets.

Anyone who has had experience in the administration of workmen's compensation will sense many other obstacles to be met in applying such a plan to the adjustment of liability for the road and street injury. The wage basis, the child who has not yet arrived at earning age, the elderly person already past productive earning years, the pedestrian and other street users and many other problems will appear to trouble the development of a workable plan. Difficult as will be the meeting of these and other obstacles they are not insurmountable. They will be solved by intensive, interested, far-seeing consideration.

I have had many requests for my draft of such a law. I have no draft. My state has never committed the task to me, and the importance of the problem and the selection of available courses suggests the desirability of assignment by the legislature to a special committee. In the drafting of a plan there will be found so many courses open that do not go to the fundamentals of the system but which will still affect special interests, rights would perhaps be unfairly influenced by my privately sponsored layout. While you and I may differ in our thought as to the wisdom of a legislative committee's choice, the making of that choice is, nevertheless, their official duty. As to the fundamental basis for a compensation system in this field, I believe it to be morally and economically sound, and that no other plan yields anything approaching such measure of justice to those who are injured while trying to make use of their rights in the streets. On the other hand, the selection of the plan of insurance in such a compensation system is a detail and not fundamental. Though of much importance, the plan selected will not of itself make or break the system as against the rejected plan.

The absorption of the loss incident to motor vehicle accidents by some system that will distribute it upon these vehicles that produce the hazard is to come. It may be temporarily delayed by playing up hard spots in the program, but such delay spells loss, not gain. A system that will endure should be our concern.

And here may I express my disappointment at the general attitude of the liability insurance companies. I appreciate that much that they have said and written has been in protest against the proposal for compulsory insurance. In that position I am not greatly out of harmony with them. To me compulsory insurance of a motor vehicle's liability is just another bit of patchwork that is bound to prove disappointing in the end. It seems like traveling a long, long way for a bread and water meal.

But it should be the part of everyone to have the public clearly understand the difference between compulsory insurance of motor vehicle liability where they pay or do not pay according to negligence factors that enter into the accident, and a compulsory compensation system where benefits become payable on some percentage basis to all who are damaged, and that without the necessity of establishing fault, and which payments are guaranteed by some suitable insurance contract. You will find much of confusion in the public mind as they undertake to distinguish the one from the other, although they are as different as night and day.

Because of the fact that insurance companies have played such an important part in the functioning of workmen's compensation, many will be unduly disturbed and influenced by the mass attack they are making on this proposal. But if you have lived in an atmosphere where it has been possible for you to observe the bitter contest between private insurance interests and the advocates of monopolistic state funds, you will understand it all.

There are probably not over twenty (20) per cent of car owners that carry automobile liability insurance—certainly not more than one-third of them, and fewer still who have property damage and collision insurance. A smaller percentage of rural car owners are insured than obtains with city folks. The overhead cost of writing the insurance coverage and of administrating the policy obligations will at once become outstandingly important. Naturally enough,

these considerations are bound to promote interest with the mass of car owners in the economies of monopolistic funds, mutual and state.

While I concede to these companies the right to be concerned about the underwriting fields left open to them, I deny their moral right to perpetuate in this motor accident field, for any underwriting advantage, the further yoking of the American people to the common law system of so-called adjustment of damage. These companies know its crooked leads, its failure to attain substantial justice, its utter unsuitableness as a guaranty of protection to those who have to walk out into the very streets and highways that were dedicated to them and to all the people for their use and good, long before the day of automobiles. Like as for the industrial accident common law liability has proven that it was miserably unjust in its conception. It has shady parentage and the pity is that it had not died "a-bornin'". I challenge these interests to defend its suitableness for the motor vehicle accident field.

An attorney for insurance interests publishes what he is pleased to call an answer to the compensation plan proposed by Judge Robert S. Marx of Cincinnati. While Judge Marx has contributed much in the way of outline of his thought upon the detail provisions of a compensation system, his theme has been that further disposition of rights and liabilities for motor vehicle injuries by the present plan is intolerable and must be supplanted by a plan that will distribute the burden without regard to negligence. Living, as he does, in Ohio, it was perfectly natural that he should think of the insurance plan in terms of state funds, and that is the "fly in the ointment". He has been giving himself to the consideration of fundamental needs as shown by the statistics of the times, and any man who thinks he is "answering" Judge Marx by inquiring as to what he will do with the hit-and-run driver, how he will compute the earnings of children and the unemployables, how much the automobile owner will have to pay for premium and the like, is simply failing to rise to the importance of the subject. For one, I should like to hear what he has to say of the justice and benefits and economy and encouragement to safety in the system he is endeavoring to perpetuate.

An officer of an information bureau for casualty insurance companies says:

"The whole compulsory liability insurance scheme is, indeed, a twentieth century revival of the primitive custom of permitting the purchase of immunity for misdeeds. Its advocacy is in effect a confession that our supposedly highly developed civilization cannot master the highway accident problem and that it is, therefore, necessary to revert to the legal code of barbaric tribes in which compensation was the established penalty for injuries and prevention through community enforced restraints was unknown. It is a throw-back to the days when tthe law of crime as a public offense was in process of formation, one of those childish reversions to the archaic which strangely enough often characterize the plots and plans of the professional reformer of today."

"And so, far, far into the night." This effort reminds me of the president of one of the stock insurance companies who hit upon the brilliant idea that with the support of prevailing war hysteria and excitement over certain forms of foreign government or lack of government, he could deal mutual insurance in the compensation field a deadly blow by the publication of a screed in which he branded the promoters of such form of insurance as "bolshevists." Well, those who think to halt progress by charging proponents with being professional reformers, and socialists and bolshevists, and what not, and those who madly but without conviction wave the constitutional guaranties of "due process of law" and "right of trial by jury," will some day waken to a realization that what they were suffering was, after all, just an obsession.

In every other field in which insurance underwriting touches auto accidents, benefits are paid without regard to negligence. For collision damage you recover though negligent, and for damage by fire or theft. And it is the same under their accident policies. In fact, they make a special play for business on the "double indemnity provision" for death while riding in a motor vehicle. And the same is true in insurance writing generally. They pay for the house that burned because the owner lighted the fire with kerosene, or looked for the gas leak with a match, and they pay the owner benefits under his accident policy to boot. Why all the pressure for retention of a system that requires a man to establish freedom from negligence before he can recover damage from the car driver who ran him down? Why do they not rise to the dignity and sublimity of interest which they apply in their life insurance program by snatching up the burden when men lay it down?

Remember that every item of damage now resulting to persons and property by reason of motor vehicle accidents are being borne by some one. The benefits recovered from the insurer of a car owner are insignificant when related to total damage. The rareness with which legal liability attaches, the expense of collection, and all the other handicaps make of the present system just one sore disappointment.

The reports of the Commissioner of Insurance for Wisconsin show the following figures on percentage of benefits to premiums collected:

	1928	1929	5-yr. average
Automobile Fire	29.	26.7	30.
Accident & Health.....	47.	52.5	47.6
Automobile Liability	37.	40.	40.9
Auto P.D. & Collision....	39.3	43.8	42.5
Workmen's Compensation	60.	63.7	58.3

In the field of automobile liability, out of $5,525,000 premium collected in 1929, the losses paid amounted to only $2,208,000, just forty cents out of a dollar. It is a conservative estimate that nearly one-half of the forty cents that is recovered by the injured party goes for attorneys' fees, witness fees, court and other collection expense. And this takes no account of the burden this system puts on the public for the services of the courts. I query whether after all the expense items are accounted for and discharged the net return is more than fifteen cents on the dollar.

Compare these figures with the experience of insurance companies under workmen's compensation in Wisconsin. For 1929 they returned benefits of $4,910,000 out of $7,716,000—nearly sixty-four cents out of each dollar. And this at small expense cost to the beneficiaries, probably less than five per cent.

Again I assert the absolute lack of fitness of the present system for the motor accident field. I challenge its sponsors to demonstrate that it is functioning in a manner that squares with decent regard for the rights of those most involved. The future of the present plan holds nothing of promise. Congestion of the highways will hardly improve. If it does then auto traffic speeds up and pedestrians must run and dodge for safety zones or keep off the streets.

It has been the rightful boast of the Wisconsin bar that although lawyers constituted a large percentage of the legislative membership at the time of the adoption of the Wisconsin Compensation Act and while it destroyed in large part the lucrative personal injury business, every man met his duty and supported the measure and a lawyer governor approved it. We should accept the necessity for development of this program as our task and go about it with genuine earnestness and a sincere determination to produce a plan that will bring semblance of order and justice and economy out of the chaos we are in, proceeding all the way without prejudice against established interests and with a desire to make use of their service whenever and wherever it may be done without material hindrance to the fundamental purpose of the system itself.

A Brief Statement of Certain Points in Opposition to Compulsory Compensation Insurance for Motor Vehicle Accidents*

THE idea of compulsory compensation for injuries resulting from motor vehicle accidents holds a certain popular appeal. It can undoubtedly be so presented as to somewhat inspire the imagination and idealism which are ever sincerely present in the American conception and promulgation of civic reforms. It would seem readily to solve so many problems. The victim who, under present conditions, remains uncompensated would be cared for in every instance. Delays inherent in the present judicial

*An address by Austin J. Lilly, General Counsel Maryland Casualty Co., delivered before the Conference of Bar Association Delegates, at Chicago, Illinois, August 18, 1930.

system would be avoided. The cost of administering the insurance would be no higher than the present cost of disposing of negligence cases, because there would be infinitely less waste in money, time and effort. It would be sound in justice to all and favor to none. It would have every equitable sanction. Finally, there would seem to exist, ready to hand, a model tried and found not wanting, but, on the contrary, highly responsive to social needs, in the workmen's compensation law, representing a compensation plan as readily adaptable to motor vehicle as to industrial accidents.

Are these *actual inherent advantages,* existing or potential, in the compensation plan, as applied to every kind of accident? Or are they, in so far as they exist at all, peculiarly limited to industrial accidents?—and as respects other classes of accidents, particularly and inevitably as respects motor vehicle accidents, are they superficial, uncertain, exaggerated, in many instances non-existent and in other instances utopian and impossible of practical realization?

I am earnestly of the conviction that the putative claimed advantages *are not* inherent in the compensation plan, as such; and as to motor vehicle accidents, they *are* both superficial and utopian, both exaggerated and, in part, non-existent; and that in every sense of the economic word, they are inaccurately stated and unjustified of any experience now available to students of the problem.

I am earnestly of the conviction also that the many disadvantages of the compensation plan, as applied to motor vehicle injuries, so far outweigh its advantages that its enactment would have the ultimate effect of intensifying certain of the unhappy conditions for which a present cure is sought, and of creating others from which we are now free; that viewed in its broader and more subtle phases, its enactment would be an economic and social error, a step backward rather than a step in advance.

Let me present, for your consideration, the following points:[1]

First: *The Compensation Plan for Motor Vehicle Injuries, as Presently Somewhat Diversely Advocated, is an Idea Distinguished for its Optimistic Nebulosity and Uncertainty, Rather than for its Practical, Scientific and Accurate Application to the res at issue.*

There are now under discussion and consideration a half-dozen variant plans of compulsory insurance of compensation for motor vehicle accidents. The differences relate in part to the basic application and in part to the administration of the plan. One plan would apply only to pedestrians and persons injured in collisions between motor vehicles. Another would provide compensation to all victims with an ancillary right of action for damages in case of provable negligence. In another, provision is made for exclusive compensation without a right of action for damages. And in still another, there is an optional selection of remedies,—the compensation or the damage remedy. In some of the plans, private insurance is authorized; in others, provision is made for only monopolistic state insurance. There is wide divergence between the amounts of compensation payable under the various plans, particularly to non-wage-earners. These differences may not be irreconcilable, but they are at least significant; they point to serious economic, political and constitutional difficulties, and they indicate that there is not now before the public any one such compensation plan upon which all proponents of the scheme itself agree.

Second: *The Compensation Plan for Motor Vehicle Injuries Is Not Analogous To and Is In No Sense Justifiable by the Success of Workmen's Compensation for Industrial Injuries.*

For many valid reasons, the workmen's compensation principle is not applicable to compulsory compensation for automobile accidents.

Employee and employer operate under the terms of a mutual contract. The basis of compensation is agreed upon and is found in the wage scale. To all intents and purposes, it is susceptible of determination in every case. The workmen's compensation plan eliminates for the classes affected, the question of damages. It simply apportions between industry as a whole, on the one hand, and those employees who have the misfortune to be injured, on the other, *that part of the actual economic loss resulting from accidents,* which is represented by lost wages and by medical and funeral expenses.

The hazard to which the employee is subject is in the ordinary case a hazard inherent in the industry itself. The employer usually is not personally responsible for the accident, and in many instances the employee is not responsible. In such cases the issue of damages may rationally be held to be beside the question. In short, the workmen's compensation law is designed to provide compensation payable by one precise, definite, limited class to another precise, definite, limited class; and these two respective classes, in their constituent elements do not vary. In return for the benefit flowing from the employer to the employee, and consisting of an assured economically-adequate payment of money in compensation for a money loss actually sustained, the employer is given a corresponding advantage in the relief from liability for compensatory damages. Experience has demonstrated that this relief exists in more than 99 per cent of all cases.

Because of its inherent attributes and the never-changing conditions under which it functions, workmen's compensation permits the cost of the insurance to be passed on to industry as a whole, with almost mathematical certainty and justice.

The workmen's compensation plan conduces logically to accident prevention. Since the compensation loss, which is definitely establishable, can be weighed against the cost of safety and preventive measures, and since the loss exceeds the cost of prevention in many instances, an immediate introduction of safety and preventive measures is the natural consequence. And it is not to be ignored that since the compensation plan imposes a sure loss of a percentage of wages upon the employee, it teaches him also, as a matter of economic preservation, to be careful.

Workmen's compensation permits of the closest possible correlation of effort, through prompt first aid and continued medical and hospital treatment actually furnished by or under the immediate direction of the employer or the insurer, in the reduction of disability and in the saving of lives.

Perhaps the outstanding advantage of the compensation plan, in its application to industrial accidents, is that by virtue of the relationship of employer and employee and by virtue of the physical conditions surrounding the overwhelming majority of accidents, immediate notice follows as a matter of course, efficient medical aid may be promptly furnished, investigation may be promptly made and the facts developed with reasonable certainty respecting not only the cause of the accident but the nature and duration of disability and the existence and extent of dependency,—the compensation basis itself being automatically established. These factors reflect themselves favorably in speed of administration, discouragement of fraud and malingering, reduction of the number of litigated cases (hearings, trials, final appeals), and consequently in the cost, which is thereby held to a minimum reasonably consistent with the character of insurance provided. It is impossible to over-estimate the psychological effect, and its influence upon the effective operation of the workmen's compensation law, of the exact knowledge, shared equally by employer, employee and insurer, of the basic facts involved in the individual case.

In complete contrast is the situation which exists under the compensation plan when it is applied to motor vehicle injuries.

There is no privity of contract between the parties to a motor vehicle compensation case. There is no fixed and established relationship between them, as there is in industry. The controversy is not between different classes, definitely established, but in large part between members of the same class: motorists are also pedestrians, and pedestrians motorists. The workman never injures the employer. If he does, compensation does not govern. Whereas, the motorist is in the position of being a putative victim as well as a putative offender. The accident does not, like so many of the industrial accidents, arise out of a general inherent and unavoidable condition. On the contrary, it in the last analysis usually arises out of a temporary condition which is created by one or both of the parties to it. Unlike the average industrial accident, the element of personal blame, fault or negligence is generally a factor. Further, a motorist becomes liable to compensate for injuries caused by the fault of others (the claimants), over whom he has never even the shadow of control. No distribution of costs can be made except as between individual motor-

[1]For an extended discussion of the problem in most of its details see "Compulsory Automobile Insurance, Compulsory Compensation for Motor Vehicle Injuries, and Motor Vehicle Financial Responsibility Laws." as discussed before the Ohio State Bar Association Committee on Motor Vehicle Legislation, January 8, 1930 (with later annotations), by Aurtin J. Lilly.

irts, for there is nothing analogous to industry by which cost, as such, can be ratably absorbed.

The influence on motor vehicle accident prevention of the compensation plan becomes less than the shadow of a shade. What financial inducement there is to the average motorist to be careful disappears when he is compelled to purchase a form of protection which relieves him of practically all financial and other responsibility for personal injury resulting from accidents caused by him, and when he in turn is assured of compensation for injuries sustained by him, regardless of his own fault! Further, the motorist has no control, making for safety, over any other motorist or over any pedestrian.

The defendant motorist and his insurer are not in position to render immediate medical attention, nor to direct what medical attention shall be furnished, nor to investigate the accident with promptness and certainty of result. There are classes of assured who will take no interest whatsoever in the matter. The burden is not their's but the insurer's. Further, parties to the same accident may both be reciprocally defendants and plaintiffs. And the interest of everyone but the insurer may naturally be to obtain the most, rather than to pay only the proper, compensation. In short, the facts of the accident, the facts governing the cause, extent and duration of disability; the existence and extent of dependency and the compensation basis will rarely ever be available with the same promptness and accuracy as in industrial accidents.

Problems arise under motor vehicle compensation which have no analogy in workmen's compensation. First and foremost among these is the compensation basis for unemployed or self-employed claimants. The wage-earning employee who loses 40 per cent of his wages during disability is interested in returning to work as promptly as possible. The wage-earning victim of a motor vehicle accident may be in the same class. But there are hundreds of thousands (approxin.ately 50 per cent or more) of motor vehicle victims who are not wage-earners or who are self-employed, with no automatic check upon their earnings. Such conditions will inevitably result in malingering, exaggeration of disability, exaggeration of dependency and kindred evils, with consequent increase in controversy, in cost of investigation and litigation and in the cost represented by excess payments of compensation benefits.

Perhaps of secondary, but nevertheless still of measurable importance, are the classes of accident which have no counterpart in workman's compensation,—accidents caused by hit-and-run drivers (where, of course, the defendant cannot be identified), accidents such as railroad-crossing collisions, collisions with stationary objects along the road, collisions with vehicles not within or subject to the law; and collisions involving motor vehicles engaged in interstate traffic. Each of these classes of accident produces its own separate and special problems, and they are problems which cannot be disposed of by a gesture. They do not arise under the workmen's compensation laws, and there is no experience to guide us toward a solution.

Third: *The Compensation Plan for Motor Vehicle Injuries* (1) *Will Not Reduce Litigation,* (2) *Will Not Insure Prompt Relief to All Motor-Vehicle-Accident Victims,* (3) *Will Not Be Equitable to All Concerned, and* (4) *Will Not Reduce the Cost of Motor Vehicle Insurance.*

Assuming our premises to be in any way meritorious, it must follow, at least by implication, from what has already been said that four of the major advantages claimed for compulsory compensation by its proponents will by no means necessarily follow upon the adoption of the plan.

(1) As respects *litigation,* it would seem to be self-evident that the mere enactment of such a law for application to motor vehicle accidents will not reduce, but will, on the contrary, materially increase, controversy. It may have the effect of shifting the controversy from one forum to another, and perhaps of simplifying it, and of changing the litigated issues,—i.e., from a major factor of negligence, to major factors of disability and the compensation basis. These advantages, in the main, can be obtained, and unquestionably should be untiringly worked for, by means of reform in our present judicial procedure, and without any reference whatsoever to compensation, possibly along lines advocated by the Supreme Judicial Council of Massachusetts and the Recess Commission on Motor Vehicle Liability Insurance of the Massachusetts Legislature. In addition to these newly created controversies will still remain controversies and the litigation arising thereon over property damage accidents, to say nothing of litigation growing out of optional damage claims, and claims against defendants not subject to the law.

(2) The assurance of *prompt* relief to *all* motor vehicle accident victims is defeated by the very nature of the plan itself. There cannot be prompt relief where there is controversy. We cannot avoid controversy under such a plan, and it is impossible to develop any one form of compensation law which will apply to all victims, unless, perhaps, by the expedient of monopolistic state insurance, providing payment for every person injured by or because of a motor vehicle on the highways, regardless of every other factor or circumstance. To mention such a plan (in view of its far-reaching, drastic and uneconomic implications) is to condemn it.

(3) When the people thereby affected are considered as a whole, the compulsory compensation plan for motor vehicle injuries, so far from being equitable to all concerned, is in many of its aspects most inequitable. No proposal can be equitable under which one of the parties receives compensation for his own fault, at the expense of the innocent party, unless there is, as in workmen's compensation, an offsetting advantage accruing to the innocent. Here there is, by and large, no such offsetting advantage. The elimination of damages commensurate with the wrong and with the social status of the parties, may work the grossest injustice. But without its elimination we depart still further from the basic concept of workmen's compensation. On the other hand to retain the factor of damages is to create a situation under which (a) the innocent motorist must in all instances pay compensation, (b) the negligent motorist must pay damages equal to and probably greatly in excess of compensation, (c) the negligent victim is in all instances entitled to compensation, (d) the innocent victim is in all instances entitled to damages equal to and probably greatly in excess of compensation, (e) the diversity of issues arising from which will inevitably lead to increased controversy and litigation. This is decidedly a hybrid status, in which our last state is worse than our first.

(4) *Cost* is perhaps the most controversial element of the problem. It has been seriously asserted that compensation for motor vehicle injuries can be provided at an average annual cost of $10.00 per car. I have in my files a rather naive editorial published in a western newspaper, insisting it can be done for $5.00 per car. When it is considered that the average pure loss cost, country-wide, which includes an allowance of only 4 per cent for allocated claim expense (excluding overhead and all similar expenses), is, under the present system, $15.88 per insured private-passenger car and $24.82 per insured commercial car, the five and ten dollar premium becomes an optimistic illusion. It will not cost less to investigate the average compensation claim. The number of claims will inevitably and legitimately increase. Payments will be made upon claims of a character which are not now reported and which, if reported, are filed and never heard from. A scientific actuarial calculation of the cost of the Straus-Cuvillier Plan, recently pending in the New York Legislature (for the State of New York, where there were in 1928, 1,760,549 passenger cars and 323,393 motor trucks) shows that it would amount to more than eighty millions of dollars per year,—excluding certain indeterminate factors which would probably add as much as an additional ten per cent. The proponents of the compensation plan for motor vehicle injuries largely base their arguments upon the workmen's compensation law. Let us, in the matter of cost, take a leaf from their book. The cost of insurance under workmen's compensation laws has constantly increased over the cost of liability insurance in all states. Let me cite these significant figures:

Classification	1919 Liability Rate Per $100.00 Payroll	1928 Workmen's Compensation Rate Per $100.00 Payroll
(The Virginia Workmen's Compensation Act went into effect January 1, 1919)		
Logging	$ .99	$4.74
Saw Mill	.99	3.91
Machine Shop	.50	1.56
Road Construction	1.315	2.39
Carpenters (NOC)	1.875	5.41
Bakeries	.405	.82
Creameries	.876	1.33
(The Tennessee Act went into effect July 1, 1919)		
Logging	1.93	5.69
Saw Mill	2.75	5.37
(The Oregon Act went into effect March 1, 1921.)		
Logging	1.00	5.61
Saw Mill	1.00	5.79

To which might be added one more exhibit from our Wisconsin experience:

	E. L. Rate 5/10 Limit	1929 W. C. Rate[3] (1)	(2)
Logging	2.16⅔	9.16	7.28
Saw Mill	2.16⅔	6.16	4.90
Planing Mill	1.20	4.48	3.56
Machine Shops	.88	2.11	1.68
Dept. Stores	.23	.46	.37

If this experience means anything, it intimates that in a field so hazardous as the motor vehicle the cost of *compensation* insurance will be double or triple the cost of *liability* insurance.

Even at a cost of approximately $35.00 per car, which in my opinion would be the average minimum premium, the compensation bill for the country as a whole would be close to one billion dollars per year; and since there is no such thing, except in theory, as an average premium, this would indicate, for many centers of population, an immediate actual increase in the cost of automobile insurance of not much less than one hundred percent, with worse to come.

Fourth: *The Compensation Plan for Motor Vehicle Injuries is of Decidedly Dubious Constitutionality.*

The right to *damages for injuries* caused by the wrongful act of another is a constitutional right, subject to regulation under the police power of the state.

The right to *trial by jury* is a constitutional right in many states.

These constitutional rights will bar *EXCLUSIVE compensation*, with *optional compensation* as the only alternative open to the proponents.

Optional compensation discriminates outrageously against motorists as a class, since they pay compensation when not at fault and damages when they are at fault,—with no offsetting benefits.

The constitutionality of the workmen's compensation laws is largely predicated upon *contractual relationship*, which does not exist at all in the case of compulsory compensation for motor vehicle accidents.

The only constitutional sanction would be police power in the regulation of the permissive right to use the roads. It is a grave question as to how far the courts would carry this sanction when private vehicles are involved, and when one of the parties to the litigation is benefitted, to the prejudice of the other.

Intercourse between the states produces still a further constitutional stumbling block.

The time at our disposal will not permit of a technical discussion of all the constitutional aspects of compulsory compensation for motor vehicle accidents. The subject is so broad and the ramifications so numerous, the distinctions between classes involved so subtle, that a volume would be necessary for a proper development of the thesis.[3]

Conclusion

I have not had time to advert to, much less to enlarge upon, the fact that the economic loss which the compensation plan is designed to prevent or absorb has never been determined and is probably incapable of actual determination. It is certain that the actual loss has been exaggerated. Disability, pain and suffering have been confused with and treated as representative of loss. As a utopian gesture, the compensation plan has its admirable attributes. As a solution of an economic problem, it falls far short of the desired end. If enacted generally, it would impose a terrific financial burden upon motor vehicle owners and operators and upon the motor vehicle industry as a whole,—a burden which, it is respectfully urged, would outweigh the remedial results accomplished. Certainly no such drastic remedy should be adopted until its uttermost implications, social, political and economic, are realized and

(Concluded on Page 761)

[2]The Wisconsin classifications 1 and 2 are for stock and mutual insurance, respectively. There are varying rates between the two. While it may be argued that the value of the dollar has declined since the liability rates were in effect, this is offset by the fact that payrolls have increased in almost equal proportion.

[3]For the purposes of the student, however, reference is made to the following pertinent cases:

Crandall v. Nevada, 6 *Wall*, 35; 18 *L. ed.* 744.
Packard v. Banton, *U. S. Sup. Ct. Adv. Ops. Mar.* 15, 1924; 68 *L. ed.* 596.
N. Y. Central Railroad v. White, 243 *U. S.* 188; 61 *L. ed.* 667.
Ward & Gow v. Krinsky (*U. S. Sup. Ct.*) 66 *L. ed.* 503.
Opinion of the Justices, 251 *Mass.*, 569; 594, 597, 607, 610.
Interstate Buses Corporation v. Holyoke St. Rwy. Co., 273 *U. S.* 45.

THE NEW BENCH OF THE WORLD COURT

(*Continued from page 710*)

as a court of cassation. He has also been Minister of the Interior in Belgium, and acted as Belgian High Commissioner in the Rhineland Occupied Territories. He was secretary-general of the Belgian delegation at the Paris Peace Conference, and has frequently represented Belgium in the Assembly of the League of Nations. For a quarter of a century, also, he was editor-in-chief of the *Révue de Droit International et de Législation Comparée.*

Count Michel Rostworowski (Poland), born in 1864, was educated at Warsaw, Cracow, St. Petersburg, and Paris. He has long been a professor at the University of Cracow. In 1917, he became a member of the Constitutional Commission of Poland, and has since been prominently identified with the work of the Codification Commission. He has frequently represented Poland at international conferences, particularly the conferences on Private International Law at The Hague in 1925 and 1928, the Conference of Signatories of the Court Protocol in 1926, and several sessions of the Assembly of the League of Nations. On several occasions, also, he has served on the Court itself as the national judge of Poland, and he is so familiar with the work of the Court that his election is much as if he were being re-elected.

Professor Walter Schücking (Germany) is another of the new judges who has served as national judge *ad hoc* in several cases before the Court. Born in 1875, he is widely known as a pacifist author and leader, and with Professor Hans Wehberg he is co-author of the most comprehensive work published on "The Covenant of the League of Nations." Formerly a professor at Breslau, Marburg, and Berlin, he is now professor at the University of Kiel and Director of the Institute of International Law at Kiel. In the latter capacity, he is responsible for the German translation of the Judgments and Opinions of the Permanent Court of International Justice. He was a member of the League of Nations' Committee of Experts for the Codification of International Law, and a delegate of the Reich at the First Conference for the Codification of International Law at The Hague in 1930.

M. Francisco José Urrutia (Colombia) is another of the new judges thoroughly equipped with a knowledge of the work of the League of Nations. Born in 1870, he has long been active in public life and in diplomatic service. He was formerly a Senator and president of the Senate. He was twice Minister of Foreign Affairs, and has been minister at Madrid and Berne. Since 1920, he has been the first delegate of Colombia at all the sessions of the Assembly of the League of Nations, and has participated in numerous other international conferences. In 1929 he served as a member of the Committee of Jurists which drafted the amendments to the Statute of the Court, and in the same year he was a delegate to the Conference of Signatories of the Court Protocol. He is the author of many works on Inter-American legal problems.

The New Deputy-Judges

The post of deputy-judge may have lost some of its importance since the increase in the number of judges; but the deputy-judges during the next nine years are a distinguished group.

M. Rafael Waldemar Erich (Finland) was formerly professor of international law at the University of Helsingfors. He has been prime minister, and has served as minister of Finland at various capitals in Europe. For some years he was the representative of his country accredited to the League of Nations, and has served in many of the Assemblies of the League.

Professor José C. da Matta (Portugal) is professor of international law at the University of Lisbon, and has been rector of the University. He has represented his government at many international conferences in recent years, and is the author of numerous works on private international law. In 1922, he appeared before the Court when it was dealing with a request for an advisory opinion on the competence of the International Labor Organization.

Professor Mileta Novakovitch (Yugoslavia), born in 1878, is dean of the Faculty of Law at the University of Belgrade. He has long been a legal adviser to the Ministry for Foreign Affairs, and has frequently represented his government at international conferences and in other international negotiations. In 1921 and 1924, he was delegate to the Assembly of the League of Nations. In 1929, he sat on the Court as national judge *ad hoc*. He is the author of more than forty works on law.

Professor Josef Redlich (Austria), born in 1869, is widely known in Europe and America. He was formerly Minister of Finance in Austria, and from 1907 to 1918 was a member of the Austrian Reichsrat. Formerly a professor at the University of Vienna, he has been for five years a professor at the Harvard Law School. His works on comparative and constitutional law have brought him great renown; his "Local Government in England," published in English, German and French, and his "Procedure of the House of Commons," are standard works; and his report on Legal Education in America, published several years ago, is classic.

The New Bench as a Whole

The election of these judges and deputy-judges ought to be hailed with satisfaction by the legal profession of all countries. From the point of view of American lawyers, it seems particularly satisfactory; for there is every reason to believe that if it should be necessary, American interests and American law will be thoroughly comprehended. Most of the business of the Court during the past nine years has grown out of the application of the treaties of this period, and much of it has arisen in connection with the conduct of or-

ganized international cooperation. If this continues to be true, it will be important that the new judges have had such wide experience in current world affairs. In judicial experience the new bench is well equipped, also; all of the new judges except Judge Kellogg are members of the Permanent Court of Arbitration; and two of them have had experience on the Permanent Court of International Justice itself. Nor does the new bench lack the mastery of legal scholarship needed for its task; it includes several of the outstanding publicists of our time in the field of international law.

Indeed, there is every prospect that the high record of the Court during the past nine years will be continued; and with the old problem of election solved and out of the way, with a firm foundation laid for the process of cumulating a body of international case law, with an excellent personnel devoting itself to building on that foundation, the world would seem to be on the high road toward an adequate system of law to serve the needs of a twentieth century international society.

A Brief Statement of Certain Points

(Continued from Page 759)

taken into account. Finally, it is submitted that there is no necessity for this particular form of solution; that better forms, all factors considered, are available and in actual use in a number of the states. In Connecticut, New Hampshire, Vermont, New York, New Jersey and California, to name only a half-dozen, a system of financial responsibility is in force, under the provisions of which the financial responsibility of individual motorists is being rapidly increased; and this without deleterious effect of any kind. Certainly proven measures of this sort should not be discarded in favor of any alternative proposal (upon even the fundamentals of which its proponents are not in harmony), no matter how euphemistically or idealistically presented, until the comparative values of the two are not only understandable but actually understood.

I have stated to you nothing but what I myself sincerely believe. Twenty years of active experience in the field of casualty insurance, and a great deal of thought and earnest study, coupled with a certain amount of native pessimism, have entered into the formation of these conclusions. I leave them with you for what they are worth. I beg of you to analyze and weigh them, and to let them stand or fall, in the light of calm, judicial and unprejudiced appraisal, upon the basis of whatever of intrinsic value they may possess.

NEWS OF STATE AND LOCAL BAR ASSOCIATIONS

California

California Bar Discusses Lay Encroachments

"Lay Encroachments," was the subject of the address of President Charles A. Beardsley at the recent meeting of the California State Bar at Pasadena, Sept. 18, 19 and 20. It furnished the keynote for the meeting, which was apparently more interested in the subject of the unlawful practice of law by title and trust companies and other lay agencies than in anything else that came up for discussion.

President Beardsley's treatment of the subject was sound and logical. "The attitude of the purchasing public toward us," he declared, "and toward the service that we render will be the controlling factor in a solution of the problem of lay encroachments, both lawful and unlawful. We should remember that the public will purchase its service in any particular field from those who serve it best, whether they are attorneys or laymen. We can accomplish most by making the Bar more worthy of respect, and more respected by improving our service so that the public will be more anxious to avail itself of our service; by improving the administration of justice, by raising the standards of those admitted to the Bar, by serving the public better. . . .

"Some members of the Bar seem to figure that the problem will be solved by talking straight from the shoulder to the laymen who are encroaching upon us. We have heard some straight from the shoulder talks upon this subject during the past year. In the words of Mr. Dooley, 'the air has been full of fight, and the fight has been full of air.'

The title and trust company aspect of the subject came before the meeting

LEONARD B. SLOSSON
President California State Bar

on Sept. 19 on a majority and minority report of the Title and Trust Company Committee. After discussing the various problems involved, this committee presented the following conclusions:

1. No bank, trust company, title company, or other corporation has the legal right or capacity to practice law in this State;

2. The drawing of a will, except by a testator for himself, constitutes practicing law;

3. A bank or trust company or other corporation, having no legal right or capacity to practice law, and having no power of testamentary disposition, cannot lawfully draw a will, either through the agency of a lay employee or through the agency of an attorney;

4. Neither a layman nor an attorney, employed by and obligated to give his entire time to a bank, trust company, or other corporation, has any legal right to draw a will for a customer or client of his employer, since he would be thereby aiding his employer to practice law;

5. There being but one party to a will, namely, the testator, the attorney who draws a will represents the testator only, and may not represent anyone else in the transaction; therefore the attorney cannot properly look to nor receive from the prospective executor compensation for drawing a will, either in the form of a fixed or agreed fee, a salary or retainer, and express or implied agreement for future employment as attorney for the executor, or otherwise;

6. Except in cases where either the relationship of the attorney to the testator or the financial condition of the testator makes it proper that such legal services should be performed by the attorney without compensation, it is improper for the attorney to draw a will without charging and receiving a reasonable compensation therefor;

7. No attorney should make a practice of drawing wills without charge in expectation of receiving his compensation through employment as attorney for the prospective executor, for such practice is beneath the essential dignity of the profession, and tends to create a situation under which the attorney owes a double allegiance to the testator and to such executor, and tends to induce the latter to solicit professional employment for, and to exploit the services of the attorney, in violation of the Rules of Professional Conduct;.

8. An attorney may properly accept professional employment from a testator to draw a will in which a bank or trust company is named executor or trustee, even though he may be retained or employed in other matters by such bank

or trust company; in such cases, however, he should make a full disclosure to the testator of his relationship to such bank or trust company, and he should be governed by the fact that, in connection with the drawing of the will, he does not represent and has no right to represent the interests of the bank or trust company, or of anyone except the testator;

9. It is not professionally improper for an attorney to accept employment from a testator to draw his will, even though the employment is influenced by a bank or trust company that has solicited the testator to appoint it executor or trustee, provided such solicitation by the bank or trust company is for the benefit of the bank or trust company and is not for the purpose of obtaining employment for the attorney;

10. An attorney should not under any circumstances draw a will without first having a free and untrammeled consultation with the testator.

11. A bank or trust company that is authorized to act as executor and trustee, as an incident and aid to its procurement of such business, and acting through its lay or attorney employees may properly inform a prospective testator in reference to any matter that relates or is incident to its status and services in such capacity, and, as an incident thereto, may properly obtain from the prospective testator such information as is necessary in order to enable it to properly and fully explain its status and the nature of its services;

12. Since one acts as an attorney at law only when he represents another, it is not practicing law for a bank, trust company or title company, as the representative of itself and of no one else, and acting through either its lay or attorney employees, to draw instruments to which it is a party; in this connection, however, it must be borne in mind that neither an executor, trustee, legatee nor devisee, named in a will, is a party to that will;

13. It is not unlawful for a title company, acting through its lay or attorney employees, to prepare only such instruments as are necessarily incident to the performance of its authorized business of insuring titles and preparing abstracts or reports on titles;

14. It is not unlawful for a title company, acting through its attorney employees, to handle litigation in defense of titles which have been insured, certified or guaranteed by it; provided that no title company should undertake the clearance of any title or the handling of any litigation as an incident to, or as a condition of, the issuance by it of a title policy, certificate or guaranty.

The committee recommended that the subject matter of the report and the conclusions set forth therein as finally adopted be submitted to representatives of all banks, trust companies and title companies doing business within the State and that they be urged to conform thereto; that appropriate court proceedings be prosecuted against any banks, trust companies and title companies, and against the representatives thereof that persist in any of the unlawful practices specified in the report; and that appropriate disciplinary proceedings be prosecuted against any member of the Bar that persists in aiding banks, trust companies and title companies to practice law, or that violate any of their ethical obligations as herein and in the Rules of Professional Conduct defined.

The report was presented by J. W. Morin of Pasadena, chairman of the committee. He explained the reasons for the various conclusions. It was soon evident, however, that the report did not go quite far enough to suit the feelings of the members. Mr. Oscar Sells of Long Beach, who filed the minority report, succeeded in securing the elimination of paragraphs 9, 11, 12, 13 and 14, as listed above. Mr. Roland G. Swaffield of Long Beach also moved to strike out certain observations in the discussion contained in this majority report and his motion was carried. The whole meeting, according to the San Francisco Recorder, was characterized by an atmosphere tense with antagonism to the activities of banks, title companies and trust companies which were regarded as encroachments on the field of the lawyer.

President Beardsley at the first session officially announced that the following had been elected members of the Board of Governors: Peter J. Crosby of Oakland and Guy R. Crump of Los Angeles as Governors-at-large; W. Finlaw Geary of Santa Rosa, George F. McNoble of Stockton, Joe G. Sweet of San Francisco, J. W. Hawkins of Modesto, Orland G. Swaffield of Long Beach, and Eugene Daney of San Diego, as District Governors. Chief Justice William H. Waste administered the oath of office to the newly elected members. Later the whole Board elected Mr. Leonard B. Slosson of Los Angeles, president of the State Bar.

At the afternoon session Chief Justice Waste delivered an address dealing with the problems presented by the young lawyer. Then followed the report of the Judicial Council Committee, in which were made a number of recommendations relating to procedure, all of which were adopted. Thomas C. Ridgway of Los Angeles, chairman of the California Code Revision Commission, outlined the program of that body. The Commission has already drafted a Probate Code, which will be presented to the Legislature in 1931. The Corporation Code will probably not be presented at that time, but will await action by the Legislature on certain amendments to be proposed by the State Bar Committee on the same subject. Announcement was made by the Section Committee that the cooperation of the law schools of the University of California, Leland Stanford University and the University of Southern California had been secured in carrying out a plan for research regarding existing conditions in the administration of justice and for proposing remedies for any defects discovered. The work is to be conducted at each of these institutions by an assistant, probably the State Bar, under the supervision of the law faculty. Reports of various other committees were then heard and the first day of the meeting closed with an address by Dean Roscoe Pound of Harvard University on "Cooperation in Law Enforcement."

A large part of the sessions on Friday were devoted to the discussion of lay encroachment in the practice of law. The report on the subject of such practice by banks, title companies and trust companies was adopted, with changes, as set forth above. The report of the Unlawful Practice Committee, a committee dealing with other phases of the problem, such as collection agencies, notaries public, corporation organizers, non-profit automobile associations, etc., was unanimously adopted. The committee believed that most of the problems in these fields could be best dealt with by cooperation and agreement. The report of the Ambulance Chasing Committee was presented by Chairman Dan R. Weller of Los Angeles, and after considerable discussion, a motion was adopted that the committee be continued to investigate means of curbing the evil and to recommend such legislation as seemed desirable. The subject of compulsory automobile insurance, according to a motion adopted, will be referred to a special committee for investigation and report at the next meeting.

R. L. BALL
President Texas Bar Association

Michigan

Fortieth Annual Meeting of Michigan State Bar Association

The Michigan State Bar Association held its Fortieth Annual Meeting in Grand Rapids on September 11th and 12th. Upwards of three hundred members of the association were present, and it was the unanimous opinion that the meeting was one of the most interesting and constructive which the association has had.

Probably the most distinctive feature of the meeting was the emphasis that was placed on the need of the re-organization of the Bar. President Duffy in his annual address emphasized the need of a thorough-going reorganization, probably accompanied by incorporation, if the organized bar is to discharge its obligations to the public and really become a constructive force in state leadership. Mr. Clifton G. Dyer, president of the Detroit Bar Association, which association has given considerable attention during the past year to reorganization of the Bar, read an interesting and instructive paper on the subject. The general sentiment of the members present was clearly in favor of taking drastic and effective measures to reorganize the Bar on such a basis that it

OSCAR C. HULL
President Michigan State Bar Association

may function effectively for its own and the public's interest.

Several guest speakers were invited to address the sessions of the association meeting. Judge Robert S. Marx of Cincinnati spoke on the subject of "Compensation for Automobile Accident Victims." He compared the Massachusetts, the American Automobile Association, and the compensation plans of handling this problem. His clear, forceful and fair way of presenting the advantages and disadvantages of the several plans won unanimous commendation.

A session was devoted to the new branches of law created by aviation and the radio. Mr. E. McD. Kintz, chief of the Legal Section, Aeronautics Branch, Department of Commerce, Washington, D. C., presented an address on the "Air Commerce Act of 1926 and Some Problems in Air Law." Mr. Duke M. Patrick, assistant general counsel of the Federal Radio Commission, discussed "Regulation of Radio Broadcasting under the Radio Act of 1927." These addresses were both instructive and interesting, especially to lawyers who do not have occasion to deal with the subjects in their ordinary law practice.

The guest of honor at the annual banquet was Judge John J. Parker of the Circuit Court of Appeals of the Fourth Circuit, Asheville, North Carolina. He delivered a stirring address on the subject of "Social Progress and the Law." It was his contention that, especially with respect to the substantive law, the charge that the law was not keeping pace with social progress is untrue. He substantiated his contention in a most effective manner by selecting instances from various phases of the law. Judge Parker's excellent address and his agreeable personality won him the esteem of the Michigan Bar. In addition to Judge Parker on the after dinner program, Justice Henry M. Butzel of the Michigan Supreme Court spoke on the "Business of the Supreme Court," offering a number of worth while suggestions as to how the practicing Bar can cooperate with the court to make for greater dispatch in the administration of justice, and Dean Henry M. Bates of the Law School of the University of Michigan spoke on the subject of "The Law in Ferment." In the course of his address Dean Bates dwelt on the fact that the law is being molded more and more by sociological and economic factors, and he pointed out that the law schools of the country are to a greater and greater extent undertaking research projects designed to further the correlation of the law with other branches of learning.

The following officers were elected for the ensuing year: President, Oscar C. Hull of Detroit; Vice-President, H. Clair Jackson of Kalamazoo; Secretary, E. Blythe Stason of Ann Arbor, and Treasurer, Clare J. Hall of Grand Rapids.

E. BLYTHE STASON.
Secretary.

New Mexico

New Mexico Bar Holds Annual Meeting

The annual meeting of the New Mexico State Bar Association was held at Roswell, beginning August 12th.

One of the interesting features of the meeting was the rejection of a resolution providing for an investigation by the Board of Commissioners of the New Mexico Bar Association into the relative merits of candidates for judicial offices throughout the state and for the publication of the findings of the commission.

This resolution was submitted by the Judiciary Committee and at once provoked a lively discussion. Its advocates pointed out that California and other states had successfully used this method to insure the election of good judges. Those opposing it pointed out that such a procedure was a radical departure from past methods in New Mexico and contended that it would plunge the association deep in politics.

The meeting also unanimously passed a resolution, to be submitted to the next session of the state legislature, favoring an increase in the salaries of Supreme Court and District Judges to an amount commensurate with their work. A resolution favoring adhesion to the World Court under the terms of the Root formula was rejected.

The meeting was called to order by President L. O. Fullen on August 12th. Mayor Robert Lee Bradley delivered an address of welcome for the city of Roswell and Judge G. A. Richardson delivered one on behalf of the Chaves County Bar Association. Congressman Albert Sims responded for the visiting members. Following this, President Fullen delivered an eloquent address, in which he pleaded for the privilege of personal liberty and individuality.

Other interesting addresses delivered during the meeting were as follows: "Rules of the Supreme Court," by Chief Justice Howard L. Bickley; "Illegal Methods of Law Enforcement," by Dennis Chaves; "Economic and Legal Predicament of the American Petroleum Industry," by Hon. James A. Veasey of Tulsa, Okla.; Res Ipsa Loquitur," by Judge H. A. Kiker; "Enforcement of Criminal Law," by Chas. R. Brice; "Congressional and Legislative Investigations," by H. B. Holt.

The banquet, which was held in the mess hall of the New Mexico Military Institute, was a very successful affair. Judge R. W. Hall, Chief Justice of the Civil Court of Appeals, Seventh Supreme Judcial District, Amarillo, delivered his address on "Prairie Dog Lawyers." A number of other brief addresses were made by leading members on this occasion.

Members of the State Bar Commission elected at the closing meeting of the convention were as follows: J. O. Seth, Santa Fe, first district; M. C. Meechem, Albuquerque, second district; E. L. Holt, Las Cruces, third district; W. C. Hayden, Las Vegas, fourth district; H. M. Dow, Roswell, fifth district; Charles H. Fowler, Socorro, seventh district; George W. Hay, Silver City, sixth district; Hugh B. Woodword, Clayton, eighth district; T. E. Mears, Portales, ninth district.

South Dakota

South Dakota Bar Holds Annual Meeting

The Thirty-first Annual Meeting of the South Dakota Bar Association was held at Sioux Falls on September 17th and 18th. Addresses were delivered by Mr. Henry M. Bates, Dean of the University of Michigan Law School, on "Law Enforcement, A National Problem," by Hon. Archibald K. Gardner, Judge of the U. S. Court of Appeals of the Eighth Circuit, on "Power and Responsibility of the Bar," and by Hon. A. M. Kvello of Lisbon, North Dakota, retiring President of the North Dakota Bar Association, on "The Lawyer from Main Street."

The report of the Committee on an Integrated State Bar, appointed at the last annual meeting to prepare and draft an act to be introduced at the 1931 Session of the Legislature was presented and approved, and the Committee continued for the purpose of seeing that a bill for such an act was introduced and

passed at the coming Session of the Legislature.

The following officers were elected for the ensuing year: President, Walter G. Miser, Pierre; First Vice President, M. A. Brown, Chamberlain; Second Vice President, W. W. Knight, Brookings; Treasurer; L. M. Simons, Belle Fourche; Secretary, Karl Goldsmith, Pierre.

Members of the Executive Council: 1st Circuit, A. B. Gunderson; 2nd Circuit, George A. Rice; 3rd Circuit, Herbert E. Cheever; 4th Circuit, Fred B. Shandorf; 5th Circuit, Van Buren Perry; 6th Circuit, E. W. Stephens; 7th Circuit, George Williams; 8th Circuit, Chambers Kellar; 9th Circuit, I. W. Churchill; 10th Circuit, J. H. Bottum; 11th Circuit, Charles A. Davis, Twelfth Circuit, W. F. Eddy.

WALTER G. MISER
President South Dakota Bar Association

Delegates to the Conference of Bar Association Delegates: George Williams, Rapid City; Tore Teigan, Sioux Falls; Mark W. Sheaf, Watertown. Alternates: E. G. Smith, Vermillion; W. F. Mason, Aberdeen; Lewis Benson, Huron.

KARL GOLDSMITH, Secretary.

During the annual meeting in August of the Eleventh Judicial (Minnesota) Bar Association John Gannon of Hibbing was elected President; Donald D. D. Harris, Vice-President; R. B. Reavill Secretary, and Judge S. W. Gilpin, Treasurer. Golf tournaments, baseball and a trap shooting match preceded the banquet and business session.

At the recent Annual Meeting of the Lincoln County (Washington) Bar Association the following officers were elected: C. A. Aten, President; Floyd Underwood, Secretary.

At the last annual meeting of the Laramie County (Wyoming) Bar Association, held in Cheyenne, officers were named for the ensuing year as follows: Judge Roderick N. Matson, President; Wilfred O'Leary, Vice-President, and Francis J. Bon, Secretary-Treasurer.